

(29,327)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 186

SAMUEL D. WHITE, AS TRUSTEE OF THE ESTATE OF
PETE STUMP, BANKRUPT, PETITIONER,

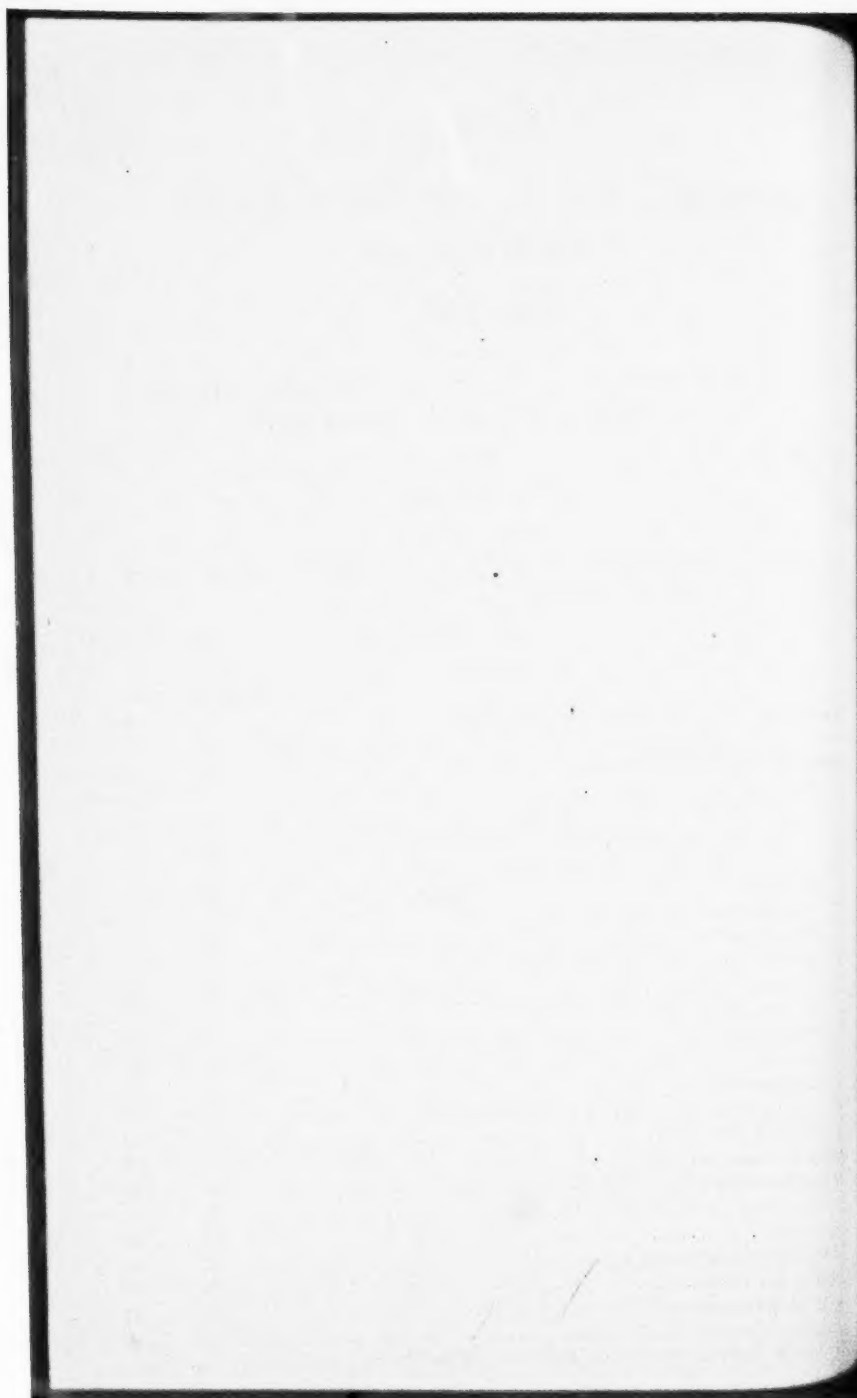
vs.

VETA STUMP

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. circuit court of appeals.....	1	1
Petition for revision.....	1	1
Record from U. S. district court for the district of Idaho.....	6	4
Petition of Pete Stump.....	6	4
Schedule A—Statement of all debts of bankrupt.....	9	6
Schedule B—Statement of all property of bankrupt....	16	12
Summary of debts and assets.....	24	20
Certificate of referee.....	26	21
Declaration of homestead.....	31	23
Petition of Veta Stump for setting apart of homestead....	33	25
Answer to petition of Veta Stump.....	35	26
Referee's order.....	39	29
Motion for and order enlarging time.....	44	31
Petition of Veta Stump for review of referee's order.....	46	32
Memorandum decision, Dietrich, J.....	51	35
Assignment of errors.....	55	37
Application for preparation of transcript.....	56	38
Clerk's certificate.....	58	39
Order of submission.....	63	39
Order directing filing of opinion and judgment.....	64	40
Opinion, Wolverton, J.....	65	41
Judgment	73	45
Order staying mandate.....	74	45
Clerk's certificate.....	76	46
Writ of certiorari and return.....	78	47



[fol. 1] **IN THE CIRCUIT COURT OF APPEALS OF THE
UNITED STATES FOR THE NINTH CIRCUIT**

In the Matter of the Estate of PETE STUMP, Bankrupt

PETITION FOR REVISION OF PROCEEDINGS OF THE DISTRICT COURT
OF THE UNITED STATES FOR THE DISTRICT OF IDAHO, IN BANK-
RUPTCY—Filed July 29, 1922

To the Honorable Erskine M. Ross, Circuit Judge of the Circuit
Court of the United States for the Ninth Circuit, and to the other
Justices of said honorable court and to the said honorable court:

The petition of Samuel D. White, trustee of the estate of Pete
Stump, bankrupt, respectfully shows:

I

That Pete Stump and Veta Stump were at all times in this peti-
tion mentioned, and are now, husband and wife.

II

That your petitioner is the duly appointed, qualified and acting
trustee of the above-entitled estate.

III

That on or about the 2d day of February, 1922, Pete Stump, a
citizen and resident of the county of Nez Perce and State of Idaho,
filed before the District Court of the United States for the District
of Idaho his petition in bankruptcy in due form and provided by
law.

[fol. 2]

IV

That among the assets described in said petition was and is the
following described real property, situated in Nez Perce County,
State of Idaho:

Northeast Quarter (N. E. $\frac{1}{4}$) of Northeast Quarter (N. E. $\frac{1}{4}$),
and Northwest Quarter (N. W. $\frac{1}{4}$) of Northeast Quarter (N. E. $\frac{1}{4}$);
Southwest Quarter (S. W. $\frac{1}{4}$) of Northeast Quarter (N. E. $\frac{1}{4}$) and
Southeast Quarter (S. E. $\frac{1}{4}$) of Northeast Quarter (N. E. $\frac{1}{4}$),
Section Thirty-one (31) Township Thirty-eight (38) North of
Range One (1) west of the Boise Meridian.

V

That in his said petition the said Pete Stump made no claim for
a homestead exemption upon the said property, and at the said time

neither he nor his wife had filed a legal declaration of homestead upon said property in accordance with the laws of the state of Idaho.

VI

That after the filing of the said petition the said Pete Stump was on February 6th, 1922, duly adjudged a bankrupt, and at the first meeting of creditors held on the 8th day of April, 1922, your petitioner was appointed as such trustee.

VII

That on the 28th day of March, 1922, Veta Stump filed a declaration of homestead in the office of the county recorder of Nez Perce [fol. 3] County, State of Idaho, and thereafter, on, to wit, the 20th day of April, 1922, filed in the lower court, before the Honorable Charles H. Chance, referee in Bankruptcy, her verified petition, asking that the said above-described land be set apart as a homestead under the laws of the state of Idaho. Thereafter the trustee filed an answer to the said petition and refused to set aside the said homestead. Upon the hearing the referee held that the filing of the declaration of homestead was too late, that the rights of creditors attached as of the date of the filing of the petition, and that the said homestead was subject to the rights of creditors.

VIII

Thereafter a petition for review of the order of the said referee was taken to the said District Court, and upon the hearing of the said matter the said District Court, on, to wit, the 29th day of June, 1922, reversed the order of the referee and directed him to allow the said homestead as prayed for in the said petition.

That the said matter in issue has never been finally adjudicated in so far as the homestead exemption laws of the state of Idaho are concerned. That under the laws of the state of Idaho relating to homestead exemptions and the claiming thereof by debtors and under judicial constructions of said statutes by the Supreme Court of the State of Idaho the right of this petitioner, as trustee for the creditors of the bankrupt as he verily believes, is paramount the [fol. 4] claim of Veta Stump for a homestead exemption in and to said real property.

That the specific questions of law which your petitioner desires to have reviewed and revised concerns the following:

(1.) Section 5441 of the Compiled Statutes of the State of Idaho provides in part as follows:

"To what judgments subject. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitutes liens upon the premises; or in an action in which

an attachment was levied upon the premises before the filing of such declaration." * * *

(2.) The filing of a voluntary petition in bankruptcy is in effect an attachment and a caveat in favor of creditors. By the filing of the petition a creditor is precluded from attaching in the state courts.

(3.) The Supreme Court of Idaho, in the case of Smith vs. Richards, 2 Idaho, 498, has decided that a valid legal lien cannot be divested by a subsequent declaration of homestead by the debtor or his wife.

(4.) The bankruptcy law and amendments thereto—Sec. 47-A and 70 as adjudicated by the Supreme Court of the United States give to the trustee a lien as of the date of the filing of the petition.

X

That your petitioner believes that the District Courts committed [fol. 5] error in making and rendering its said decision and desires to have the said matter reviewed by the Circuit Court of Appeals of the Ninth Circuit. That in the opinion of our petitioner it is necessary that there be a final adjudication of the said matter in order that a uniform construction of the bankruptcy — may be had in regard to the allowance of the homestead exemption.

Wherefore, this petitioner feeling himself aggrieved prays that the decision and judgment of the Honorable F. S. Dietrich be reviewed and revised in matter of law by the Honorable United States Circuit Court of Appeals for the Ninth Circuit, as provided in paragraph 24B of the Bankruptcy Act of 1898 and the rules and practice in such case provided.

S. D. White, Petitioner. Tannahill & Leeper, By Robert D. Leeper, Attorneys for Petitioner, Samuel D. White, Trustee. Residence and P. O. Address, Lewiston, Idaho.

STATE OF IDAHO,
County of Nez Perce, ss:

I, Samuel D. White, the petitioner mentioned in the foregoing petition, do hereby make solemn oath that I am the duly appointed qualified and acting trustee of the estate of Pete Stump, Bankrupt; that the statement of facts contained in said petition are true. acc- [fol. 6] cording to the best of my knowledge, information and belief.

S. D. White.

Subscribed and sworn to before me this 10th day of July, 1922. G. O. Tannahill, Notary Public in and for said State, Residing at Lewiston, Therein. [Seal.]

Service of the within petition for review and revision admitted this 18th day of July by receipt and retention of a true copy thereof.

Harve H. Phipps, Attorney for Pete Stump, Bankrupt.

[File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL
DIVISION, DISTRICT OF IDAHO

PETITION OF PETE STUMP—Filed Feb. 2, 1922

No. 1539

Debtor's Petition

To the Honorable F. S. Dietrich, Judge of the District Court of the United States for the Central Div., District of Idaho:

The petition of Pete Stump, of Southwick, in the County of Nez [fol. 7] Perce, and District and State of Idaho, a (State occupation) farmer, respectfully represents that he has resided (or has resided, or has had his domicile) for the greater portion of six months next immediately preceding the filing on this petition at Southwick, Nez Perce County, Idaho, within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked A (1, 2, 3, 4, 5), and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B (1, 2, 3, 4, 5, 6), and verified by your petitioner's oath, contains an accurate inventory of all his property both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore your petitioner prays that he may be adjudged by the Court to be a bankrupt within the purview of said acts.

Pete Stump, Petitioner. Clay McNamee and James L. Harn,
Attorneys for Petitioner. Residence, Lewiston, Idaho.

[fol. 8] UNITED STATES OF AMERICA,
Central Div., District of Idaho,
County of —, ss:

I, Pete Stump, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Pete Stump, Petitioner.

Subscribed and sworn to before me, this 30th day of January, A. D. 1922. James L. Harn, Notary Public, (Official character:) [N. P. Seal.]

All the Schedules must be filed with this Petition.

Oath to Petition and Schedule may be made before Referees, and before officers authorized to administer oaths in proceedings before the Courts of the United States, or under the laws of the State where the same are to be taken, and diplomatic or consular officers of the United States in any foreign country. Attorney for Petitioner cannot act as Notary.

SCHEDULE A

Statement of all Debts of Bankrupt

Statement of all Creditors Who are to be Paid in Full or to Whom Priority is Secured by Law

Claims which have priority	Reference to ledger or voucher	Names of creditors	Residences (if unknown, that fact must be stated); give street and number	Where and when contracted	Nature and consideration of debt, and whether contracted as partner or joint contractor, and if so, with whom	Amount
¹ Taxes and debts due and owing to the United States.	\$ cts. None.
² Taxes due and owing to the State of Idaho, or to any county, district or municipality thereof.	½ taxes, 1921, due State of Idaho... Taxes, 1921, due on Clarkston Property, about	\$67 01 20 00
³ Taxes due State of Washington.	None.
Wages due workmen, clerks, servants or traveling salesmen, to as amount not exceeding \$300 each, earned within three months before filing the petition.	None.
⁴ Other debts having priority by law.	None.
Total	\$86 01

Pete Stump, Petitioner.

This schedule must be executed in triplicate.

Creditors Holding Securities

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by Acts of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

This schedule includes liens, pledges, mortgages, notes, etc.

Reference to ledger or voucher	Names of creditors	Residences (if unknown, that fact must be stated)	Description of securities	When and where debts were contracted	Value of securities	Amount of debt
					\$15,000	.....
	Vermont Loan and Trust Co., Spokane, Wash., about					
	Real Estate mtg. given about Nov., 1920, due in 5 years, bearing Int. at 6% for principal sum of					
	\$5,500. Mtg. covers N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$				5,500.00	
	Sec. 31 Twp. 38 N. R. L. W. B. M. ....				.....	200.00
	Two Hundred Dollars, commission, notes due on above loan. ....				.....
	W. H. Stump, Clarkston, Wash., given about Oct., 1920, real estate mtg. for \$500. Int. 7% due				1,500	520.00
	Oct., 1922. Mtg. covers $1\frac{1}{2}$ acres on Libby and 15th St., Clarkston, Washington, about.					
	Total				\$16,500	\$6,220.00
						Pete Stump, Petitioner.

NOTE.—Give street and number address where possible.

[fol. 11]

Schedule A-3

Creditors Whose Claims are Unsecured

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher	Names of creditors	Residences (if unknown, that fact must be stated)	When and where contracted	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other per- son, and if so, with whom	Amount
	Ziemann Bros., Southwick, Idaho, open account for merchandise between 1921 and present date about.....		1921, Int. 10%.....		\$163.00
	Joe Michels, Orofino, Ida., promissory note borrowed about Oct., 1921, Int. 10%.....		1921, Int. 10%.....		300.00
	Dewiters and Gonzward, Leland, Idaho, store account between 1921 and 1922, about.....		1921, Int. 10%.....		152.00
	Vollmer Clearwater Co., Kendrick, Idaho, promissory note, given about Feb., 1921, Int. 10%.....		1921, Int. 10%.....		3,480.00
	B. F. Wardell, Spokane, Wash., promissory notes, for Life Ins. Policy given Oct. 16th, 1920, Int. 8%.....		1920, Int. 8%.....		160.00

[fol. 12]

Kendrick State Bank, Kendrick, Ida., two promissory notes given about 1920 and Oct., 1921, Int. 10%.....	\$75.00
Kendrick Store Co., Kendrick, Idaho, open account, store bill between Nov., 1921, and present date, about.....	39.00
Farmers Bank, Kendrick, Idaho, note given for purchase price of binder, about Oct., 1921, three other signers besides petitioner. Total amount of note about \$130, petitioner's liability $\frac{1}{4}$ thereof.....	32.50
Farmers Bank, Kendrick, promissory note given about Oct., 1921, Int. 10% about.....	100.00
Total	\$4,474.00

Pete Stump, Petitioner.

NOTE—Give street and number address where possible.

[fol. 13]

Schedule A-4

Liabilities on Notes or Bills Discounted Which Ought to be paid by the Drawers, Makers, Acceptors, or Indorsers

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher	Names of holders as far as known	Residences (if unknown, that fact must be stated)	Place where contracted	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and if so, with whom	Amount
	B. F. Wardell, Spokane, Wash., two promissory notes, Life Assurance Policy, given about Oct., 1920, signed by petitioner and his wife, Veta Stump.....				\$160.00
	Farmers Bank, Kendrick, promissory note, signed by Petitioner- Homer Hayward, Gordon Harris and John Deteneyer, about Oct., 1921, purchase price of binder about \$130.....				130.00
	Total				<u>\$290.00</u>
				Pete Stump, Petitioner.	

NOTE.—Give street and number address where possible.

[fol. 14]

Schedule A-5

Accommodation Paper

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

Reference to ledger or voucher	Names of holders	Residences (if unknown, that fact must be stated)	Names and resi- dences of per- sons accom-dated	Places where contracted	Whether liability was contracted as partner or joint contractor, or with any other per- son; and if so, with whom	Amount \$ cts.
Same as Schedule A-4.						
Total						\$290.00

Pete Stump, Petitioner

[fol. 15]

Oath to Schedule A

UNITED STATES OF AMERICA,
Cent. Div., District of Idaho,
County of —, ss:

On this 30th day of January, A. D. 1922, before me personally came Pete Stump, the person mentioned in and who subscribed to the foregoing Schedule (marked A 1, 2, 3, 4, 5), and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

Subscribed and sworn to before me this 30th day of January, 1922. James L. Harn, Notary Public. [N. P. Seal.]

Petitioner's Attorney cannot act as Notary, etc.

To be attached to Schedule A after execution before proper officer.

This oath can be taken before a U. S. Judge, Referee, U. S. Commissioner or Notary Public.

[fol 16]

Schedule B-1

SCHEDULE B

Statement of All Property of Bankrupt

Real Estate

Location and description of all real estate owned by debtor, or held by him	Incumbrance thereon, if any, and date thereof	Statement of particulars relating thereto	Estimated value
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ and SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 31, Twp. 38, N. R. 1 W. B. M.			
Vermont Loan & Trust Co. hold mtg. thereon \$5,500.00			\$15,000.00
One and one-half acres of land situate on Libby and 15th St., Clarkston, Wash., outstanding Mtg. thereon held by W. H. Stump.			1,500.00
Total			<u>\$16,500.00</u>

Pete Stump, Petitioner.

This schedule must be executed in triplicate.

Personal Property

A—Cash on hand.....	None.	
B—Bills of exchange, promisory notes, or securities of any description (each to be set out separately).....	None.	
C—Stock in trade in business of — at — of the value of.....	—.	
D—Household goods and furniture, household stores, wearing apparel, and ornaments of the person, viz.	Beds, bedding, furniture, stoves, cooking utensils, dishes and provisions for family use of..... Feed, grain for livestock for 6 months including 5½ tons of hay.....	\$300.00 80.00
E—Books, prints and pictures, etc.....		20.00
F—Horses, cows, sheep and other animals (with number of each), viz.	Four work-horses, value about..... Two cows and one heifer, one sucking calf..... Four sows and ten shoats about four months old, about.	300.00 120.00 110.00
		<hr/> \$930.00
G—Carriages and other vehicles, viz.	One old wagon, value about..... One old hack, value about.....	\$35.00 30.00

Schedule B-2—Continued

H—Farming stock and implements of husbandry, viz.	Few small tools, value about.....	10.00
I—Shipping and shares in vessels, viz.	None.	
K—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.	One Oliver gang plow 14 inch, value..... One 3 section Harrow, value..... Feed, grain and 5½ tons of hay, value.....	20.00 30.00 80
L—Patents, copyrights and trade marks, viz. . .	None.	
M—Goods or personal property of any other description, with the place where each is situated, viz.	85 acres of growing grain (wheat) estimated value..	415.00
Total		<u>\$620.00</u>
		Pete Stump, Petitioner.

NOTE.—If any space is insufficient, annex additional sheets.

Schedule B-3

Choses in Action

A—Debts due petitioner on open account. . . . None.

B—Stock in incorporated companies, interest in joint stock companies and negotiable bonds.

C—Policies of insurance. . . . \$2,500 Life Ins. Policy in Idaho State Ins. Co., Boise, Idaho, have borrowed thereon from said Co., \$204.00. Policy has run about 5 years. \$2,000 Policy in Equitable Life Ins. Co. of New York. No cash surrender value. Policy issued about 3 months prior to this date.

D—Unliquidated claims of every nature with their estimated value. . . . None.

E—Deposits of money in banking institutions and elsewhere. . . . None.

Total Pete Stump, Petitioner.

[fol. 20]

Schedule B-4

Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor or subject to Any Power or Right to Dispose of or to Charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the persons to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as it is known to the debtor.]

General Interest	Particular description	Supposed value of my interest \$ cts.
Interest in land.....	.....	.....
Personal property.....	None.	.....
Property in money, stocks, shares, bonds, annuities, etc.....	None.	.....
Rights and powers, legacies and bequests.....	None.	.....
Total .....	.....	.....

[fol. 21]

Property heretofore conveyed for benefit of creditors.....

What portion of debtor's property has been conveyed by deed of assignment or otherwise for benefit of creditors; date of such deed, names and addresses of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor..... None.

Amount
realized
from proceeds
of prop-
erty conveyed
\$ cts

What sum or sums have been paid to counsel, Have paid Clay McNamee and James L. Harn, attor-
and to whom, for service rendered or to be neys at Lewiston, Idaho, one hundred dollars, pay-
rendered in this bankruptcy? ment in full for services as my attorneys herein

Total
Pete Stump, Petitioner.

[fol. 22]

Schedule B-5

A Particular Statement of the Property Claimed as Exempted from the Acts of Congress Relating to Bankruptcy, Giving Each Item of Property and Its Valuation and, if Any Portion of it is Real Estate, Its Location, Description and Present Use.

Military uniforms, arms and equipments..... None.

Property claimed to be exempted by State laws; Beds, bedding, furniture, cooking utensils, dishes, etc., its valuation; whether real or personal; its family provisions, pictures, etc..... \$310.00
 description and present use, and reference Four horses, 1 set and half of harness, feed grain for said horses for 6 months, including 5½ tons of hay.. 430.00
 given to the statute of the State creating the 2 cows and 1 sucking calf..... 80.00
 exemption. 1 old wagon..... 35.00

Small tools..... 10.00
 1 Oliver Gang Plow..... 20.00
 50 acres fall sown wheat on premises hereinbefore described owned by petitioner..... 250.00
 Section 6920 Compiled Laws of Idaho and subdivisions thereof.

Total \$865.00

Pete Stump, Petitioner.

[fol. 23]

Schedule B-6

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate

The following is a true list of all books, papers, deeds, and writings relating to my trade, business dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which may have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books None.

Deeds Deed to Nez Perce Co. farm land, deed to Clarkston
acraege.

Papers, etc..... None.

Pete Stump, Petitioner.

[fol. 24]

Oath to Schedule B

UNITED STATES OF AMERICA,
Cent. Div., District of Idaho,
County of —, ss:

On this 30th day of Jan., A. D. 1922, before me personally came Pete Stump, the person mentioned in and who subscribed to the foregoing Schedule (marked B 1, 2, 3, 4, 5, 6), and who, being by me first duly sworn did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy.

James L. Harn, Notary Public. [N. P. Seal.]

Petitioner's Attorney cannot act as Notary, etc.

To be attached to Schedule B after execution before proper officer.

This oath can be taken before a U. S. Judge, Referee, U. S. Commissioner or Notary Public.

SUMMARY OF DEBTS AND ASSETS

[From the Statement of the Bankrupt in Schedules A and B]

Schedule A—1 (1), Taxes and Debts due United States.	None.
Schedule A—1 (2), Taxes due States, Counties, Districts and Municipalities.....	87.01
Schedule A—1 (3), Wages.....	None.
Schedule A—1 (4), Other debts preferred by law.....	None.
[fol. 25] Schedule A—2, Secured Claims.....	6,220.00
Schedule A—3, Unsecured Claims.....	4,474.00
Schedule A—4, Notes and Bills which ought to be paid by other parties thereto.....	290.00
Schedule A—5, Accommodation Paper—See Schedule A—4.	
Schedule A, Total.....	\$11,071.01
Schedule B—1, Real Estate.....	\$16,500.00
Schedule B—2-a, Cash on hand.....	None.
Schedule B—2-b, Bills, Promissory Notes and Securities	None.
Schedule B—2-c, Stock in Trade.....	None.
Schedule B—2-d, Household Goods, etc.....	300.00
Schedule B—2-e, Books, Prints and Pictures.....	10.00
Schedule B—2-f, Horses, Cows and other Animals....	550.00
Schedule B—2-g, Carriages and other Vehicles.....	35.00
Schedule B—2-h, Farming Stock and Implements and Feed.....	140.00
Schedule B—2-i, Shipping and Shares in Vessels.....	None.
Schedule B—2-k, Machinery, Tools, etc.—See 2 h.	
Schedule B—2-l, Patents, Copyrights and Trade-Marks	None.

Schedule B—2-m, Other Personal Property—Growing Crop	250.00
Schedule B—3-a, Debts due on Open Accounts.....	None.
[fol. 26] Schedule B—3-b, Stocks, Negotiable Bonds, etc.	None.
Schedule B—3-c, Policies of Insurance—See Schedule B-3.	
Schedule B—3-d, Unliquidated Claims	None.
Schedule B—3-e, Deposits of Money in banks and elsewhere	None.
Schedule B—4, Property in Reversion, Remainder, Trust, etc.	None.
Schedule B—5, Property claimed to be exempted—(\$1,210.00).	
Schedule B—6, Books, Deeds and Papers.....	None.
Schedule B, Total	_____
N. B.—Insert all totals, where indicated.	_____, Petitioner.
[File endorsement omitted.]	

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT
OF IDAHO, CENTRAL DIVISION

In Bankruptcy

No. 1539

[Title omitted]

CERTIFICATE OF REFEREE—Filed Apr. 8, 1922

I, Charles H. Chance, one of the Referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me, the following question arose pertinent to said proceedings:

[fol. 27] The voluntary petition of Pete Stump to be declared a bankrupt was filed with the Clerk of the above-named court, February 2d, 1922, and an order made on said date by said Clerk referring the matter to said Referee.

The above-named Pete Stump was by said Referee on February 6th, 1922, duly adjudged a bankrupt.

The first meeting of creditors of said bankrupt was set for February 17, 1922, but by reason of the illness of the bankrupt on said date and illness of the Referee thereafter, the first meeting of creditors was not held until April 8th, 1922.

In his petition and schedules, the bankrupt listed as part of his assets the Northeast Quarter of Section 21, Township 38 North, Range 1 West of the Boise Meridian in Nez Perce County, State of Idaho, and fixed the estimated value thereof, at \$15,000.00, and further showed in said petition and schedules that said property

was subject to a mortgage for the sum of \$5,500.00 in favor of Vermont Loan & Trust Company; that in schedule B (5) of said petition and schedules, the bankrupt claimed as exempt certain personal property but made no claim on exemption of any part of said real property above described as a homestead.

That on March 1st, 1922, Veta Stump, the wife of said bankrupt, made and acknowledged a declaration of homestead on the real property above described, claiming said property as a homestead for herself, her husband and the three minor children of the bankrupt and herself; that in said claim of homestead, the estimated value [fol. 28] of said homestead was \$5,000.00; that said declaration of homestead was filed with the County Recorder of Nez Perce County, State of Idaho, on March 28th, 1922, and recorded in Book 2, page 339, Records of Homesteads of said county.

That at said meeting of creditors of April 28th, 1922, before the Referee, the bankrupt and his attorney, J. L. Harn being present, the following proceedings, among others, were had, to wit:

"Thereupon the bankrupt, by his attorney, submitted to the Referee a written claim of homestead, dated March 1st, 1922, recorded March 28th, 1922, in Book 2, page 339, Records of Homesteads, Nez Perce County, Idaho, for the following described land: Northeast Quarter of Section 31 Township 38 North, Range 1 East of the Boise Meridian,—said claim being made by Veta Stump, wife of the bankrupt, on behalf of herself, her husband, Pete Stump, and three minor children; the estimated value of said land being set forth in said claim as \$5,000.00.

Thereupon the attorney for the said Farmers State Bank objected to the reception or allowing of the claim of homestead at this time on the ground that the petition in bankruptcy was a voluntary petition; was made and sworn to by the bankrupt on January 30th, 1922, was filed in the United States District Court for the District of Idaho, on February 2d, 1922, and the bankrupt was adjudged a bankrupt, February 6th, 1922, and no claim was made in the petition by the said Pete Stump for any exemption on account of any [fol. 29] homestead claim on the land above described.

Thereupon the referee announced that he would withhold a decision as to allowing an amendment to the petition in bankruptcy to allowing said claim of exemption for the period of ten days and instructed the attorney for the bankrupt and the attorney for said Farmers State Bank to submit briefs or otherwise advise the referee as to whether or not said claim should be allowed."

On April 20th, 1922, formal claim of exemption of the property claimed as a homestead by the said Veta Stump, was filed with the Referee together with a brief of the attorneys for the said Veta Stump.

On April 28th, 1922, the answer of the trustee in bankruptcy to said petition of the said Veta Stump was filed with the Referee together with brief of the trustee's attorneys.

That on April 28th, 1922, the Referee made an order disallowing

said claim of exemption of homestead as petitioned for but allowing said claim subject to the title of the trustee and the claim of general creditors as a priority over the claim of the said Veta Stump.

That on May 6th, a petition was filed by the attorneys of the bankrupt asking for ten days additional time to prepare, serve and file the necessary papers on an appeal from the order of the Referee of April 28th, 1922.

That on May 6th, 1922, the Referee made an order allowing the bankrupt ten days additional time in which to file petition for re-[fol. 30] view of the order of the Referee of April 28th.

That on May 16th, 1922, the said Veta Stump, by her attorneys, filed with the Referee a petition for review of the order of April 28th, 1922, of the Referee.

The question to be reviewed is as follows:

Should the Referee have allowed the claim of the said Veta Stump for homestead in the amount of \$5,000.00 as a claim superior in right to the title of the trustee or to the claims of the general creditors against the real property on which claim of homestead was filed by the said Veta Stump, March 28th, 1922.

And the said question is hereby certified to the Judge for his opinion thereon.

Attached hereto are the following instruments and copies:

1. Copy of declaration of homestead.
2. Petition of Veta Stump for allowance of claim of homestead as filed with the Referee, April 20th.
3. Answer of trustee to petition of Veta Stump as filed with the Referee, April 28th.
4. Copy of order of Referee of April 28th, 1922.
5. Petition for extension of time.
6. Order allowing extension of time.
7. Petition of Veta Stump for review as filed with the Referee, May 16th, 1922.

Dated at Lewiston, in the County of Nez Perce, in the District aforesaid, this 16th day of May, 1922.

Charles H. Chance, Referee in Bankruptcy.

[fol. 31]

DECLARATION OF HOMESTEAD

Know all men by these presents, that I do hereby certify that I am married and that I do now reside, at the time of making this declaration, with my family on the land and premises hereinafter described.

That my family consists of myself, my husband, Peter Stump, and three minor children; that my said husband has made no homestead

declaration and declarant is making this declaration for the joint benefit of herself, her said husband and three minor children.

That the land and premises, on which my family and I reside, are bounded and described as follows, to wit: lying and being in the County of Nez Perce, State of Idaho:

"The Northeast quarter of the Northeast quarter (N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$) the Northwest quarter of the Northeast quarter (N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$) the Southwest quarter of the Northeast quarter (S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$) and the Southeast quarter of the Northeast quarter, (S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$) all in Section Thirty-one (31), Township Thirty-eight (38) North of Range One, W. B. M."

That it is my intention to use and claim the said lot of land and premises, above described, together with the dwelling-house thereon and its appurtenances, as a homestead and I do hereby select and claim the same as a homestead for the joint benefit of myself, my said husband and said three minor children.

[fol. 32] That the actual cash value of said property, I estimate, to be Five Thousand Dollars (\$5,000.00) in which said amount I claim and value said homestead.

(Signed) Veta Stump. (Seal.) Signed, sealed and delivered in the presence of: G. H. Zieman.

STATE OF IDAHO,

County of Nez Perce, ss:

On this 1st day of March, 1922, before me G. H. Zieman, a Notary Public, in and for said county and State, personally appeared Veta Stump, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same for the uses and purposes therein enumerated.

In witness whereof, I have hereunto set my hand and affixed my Notarially Seal, the day and year, in this certificate first above written.

G. H. Zieman, Notary Public in and for the State of Idaho,
Residing at the Town of Southwick, Nez Perce County,
Idaho. [Seal.]

Filed and recorded March 28th, 1922. Book 2, Hstd., page 339.

[File endorsement omitted.]

[fol. 33] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF IDAHO, CENTRAL DIVISION

In Bankruptcy.

No. 1539

Before Charles H. Chance, Referee in Bankruptcy
[Title omitted]

PETITION OF VETA STUMP FOR SETTING APART OF HOMESTEAD—

Filed Apr. 20, 1922

Comes now Veta Stump, by her attorneys, Clay McNamee and James L. Harn, and respectfully shows to the Court the following facts, to wit:

I

That Veta Stump now is and at all times hereinafter has been the wife of Peter Stump, who is the same and identical person as Pete Stump.

II

That prior to the first day of March, A. D. 1922, Veta Stump and Peter Stump, as husband and wife, were the owners in fee simple absolute of the following described parcels of land situate, lying and being in the County of Nez Perce, State of Idaho, and particularly described as follows, to wit:

"The Northeast quarter of the Northeast quarter (N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$), the Northwest quarter of the Northeast quarter, (N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$) the Southwest quarter of the Northeast quarter, (S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$) and the Southeast quarter of the Northeast quarter, (S. E. [fol. 34] $\frac{1}{4}$ N. E. $\frac{1}{4}$), all in Section Thirty-one (31), Township Thirty-eight (38) North of Range One, (1), West Boise Meridian."

III

That on or about the first day of March, A. D. 1922, Veta Stump, under the provisions of Section- 5438 and 5462 of the Idaho Compiled Statutes of 1919 filed a Declaration of Homestead to the extent of five thousand dollars on the premises herein described and that thereafter on the 28th day of March, A. D. 1922, filed and recorded the same in Book two of Homesteads, at page 339 on the records of Nez Perce County, State of Idaho.

IV

That on or about the 6th day of February, A. D. 1922, Peter Stump, on a voluntary petition in the above-entitled court, was adjudged a bankrupt.

Wherefore, your petitioner prays that the property claimed in the Declaration of Homestead, herein mentioned, be segregated from the assets of the bankrupt estate of Peter Stump and that an order be entered herein, holding the same separate and apart from the bankrupt estate of Peter Stump and that the exemption be allowed therefor, and that the interests of your petitioner in said property shall be forever protected from the proceedings in the matter of the bankruptcy of Peter Stump.

Dated and signed this 19th day of April, A. D. 1922.

Veta Stump.

[fol. 35] [File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT
OF IDAHO, CENTRAL DIVISION

In Bankruptcy.

No. 1539

[Title omitted]

ANSWER TO PETITION OF VETA STUMP FOR SETTING APART OF
HOMESTEAD—Filed Apr. 28, 1922

Comes now S. D. White, trustee in the above-entitled matter, and by way of answer to the petition of Veta Stump, admits, denies and alleges as follows, to wit:

I

Admits that Veta Stump is now the wife of Peter Stump, the bankrupt.

II

Denies that prior to the first day of March, 1922, Veta Stump and Peter Stump, as his wife, were the owners in fee simple absolute of the real property described in paragraph two of the said petition but upon information and belief alleges that the same was and is the separate property of the said Peter Stump and was acquired by him prior to the marriage with the said Veta Stump.

III

Denies that on or about the 1st day of March, 1922, Veta Stump filed a declaration of homestead on the said premises, but alleges that such declaration of homestead was filed and recorded with the [fol. 36] County Recorder of Nez Perce County, Idaho, on the 28th day of March, 1922.

IV

Admits that on or about the 6th day of February, A. D. 1922, the said Peter Stump upon his voluntary petition was duly adjudged a bankrupt and that his petition was filed in the said matter on the 2d day of February, 1922.

Affirmative Defense

By way of affirmative defense this trustee alleges:

I

That upon the filing of the petition in bankruptcy by the said Peter Stump, his estate passed into the custody and control of this Court and this trustee upon his appointment is deemed vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings upon all property of the bankrupt which was not exempt at the date of the filing of the petition.

II

That the land described in the petition of Veta Stump at the time of the filing of the petition in bankruptcy by the said Peter Stump and thereafter, has stood and still stands in the name of the said Peter Stump upon the records of Nez Perce County, Idaho, subject to a mortgage in the sum of \$3,500.00.

III

That at the time of the filing of the said petition in bankruptcy, on February 2, 1922, and at all times prior to March 28th, 1922, there was no duly acknowledged declaration of homestead upon the said premises executed, filed and recorded as provided by law, either [fol. 37] by Peter Stump or Veta Stump, his wife, and the said property prior to the time of the filing of the said petition was subject to attachment and levy by creditors.

IV

That the said bankrupt did not at the time of the filing of his schedules and has not since claimed the said property as exempt.

V

That the filing of the declaration of homestead by the said Veta Stump is *annulity* as against this trustee and the unsecured creditors of Peter Stump whom he represents. That all of the said property is nonexempt and this trustee is entitled to the possession thereof for the use and benefit of creditors pending the administration of this estate, and the same should be sold to satisfy the claims of creditors in accordance with law.

VI

That this trustee has refused to set aside the same as exempt property.

Wherefore, trustee respectfully prays as follows:

I. That the prayer of the petition of Veta Stump be denied.

II. That the trustee be let into the immediate possession and control of the hereinafter described property.

III. That the following described property be administered by this trustee for the benefit of creditors of this estate subject to only valid existing liens, to wit:

[fol. 38] "The Northeast Quarter of the Northeast Quarter (N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$), the Northwest Quarter of the Northeast Quarter, (N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$) the Southwest Quarter of the Northeast Quarter (S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$) and the Southeast Quarter of the Northeast Quarter (S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$) all in Section Thirty-one (31), Township Thirty-eight (38) North of Range One (1), West of the Boise Meridian."

IV. That Peter Stump and Veta Stump be restrained and enjoined from interfering with the use, possession and control of said premises by this trustee pending the administration of this estate.

Tannahill & Leeper, By S. O. Tannahill, Attorneys for Trustee. Residence and P. O. Address, Lewiston, Idaho.

STATE OF IDAHO,

County of Nez Perce, ss:

S. D. White, being first duly sworn, says, that he is the trustee in the above-entitled matter; that he has read the foregoing answer, well knows the contents thereof and verily believes the same to be true.

S. D. White.

Subscribed and sworn to before me this 28th day of April, 1922. S. O. Tannahill, Notary Public, Residing at Lewiston, Idaho. (N. P. Seal.)

[File endorsement omitted.]

[fol. 39] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF IDAHO, CENTRAL DIVISION

In Bankruptcy

[Title omitted]

ORDER OF REFEREE RE FILING PETITION FOR REVIEW—Filed Apr.
28, 1922

The voluntary petition of Pete Stump of Southwick, Nez Perce County, Idaho, to be declared a bankrupt was filed with the Clerk of the above-entitled court, February 2d, 1922, and on said date was referred to Charles H. Chance, a Referee in Bankruptcy, residing at Lewiston, in Nez Perce County, in said District. On the 6th day of February, 1922, the petitioner was duly adjudged a bankrupt and the first meeting of the creditors was set for February 17th, 1922. By reason of the illness of the bankrupt on said February 17th, 1922, the first meeting of the creditors was adjourned to March 3d, 1922; by reason of the illness of the Referee on March 3d, 1922, the first meeting of the creditors was adjourned to Saturday, April 8th, 1922, at ten A. M. at the office of the Referee, Lewiston, Idaho, and notice of said adjourned meeting to said April 8th was given by mail to all known creditors.

The first meeting of the creditors was held at ten A. M. at the office of the referee at Lewiston, Idaho, on April 8th, 1922. At said meeting, James L. Harn, attorney at law, appeared for Veta Stump, wife of the bankrupt, and submitted to the referee a written claim of [fol. 40] homestead, dated March 1st, 1922, recorded March 28th, 1922, in Book 2, page 339, Records of Homesteads, Nez Perce County, State of Idaho, for the following described land:

The N. E. $\frac{1}{4}$ of Sec. 31, Twp. 38 N., R. 1 W., B. M., in Nez Perce County, State of Idaho.

That a copy of the declaration of homestead so made and filed by the said Veta Stump was at said time filed with the Referee. In said claim of homestead, the claimant, Veta Stump sets forth that her family consists of herself, her husband, Peter Stump, and three minor children; that the said Peter Stump has made no homestead declaration and the said Veta Stump makes said declaration for the benefit of herself, her husband and said children; that in said declaration, declarant estimates the actual cash value of the property at Five Thousand Dollars (\$5,000.00), in which amount the declarant claims and values the homestead, said declaration of homestead was duly acknowledged March 1st, 1922, before C. A. Zieman, a Notary Public residing at Southwick, Idaho, and was filed as aforesaid March 28th, 1922, with the County Recorder of said Nez Perce County.

The question arising as to whether or not said claim of homestead should be allowed by the referee as a prior claim to the claims of the general creditors, the referee requested Mr. Harn, attorney for the

declarant, and Mr. R. D. Leeper, attorney for the Farmers Bank of Kendrick, Idaho, a creditor, to file briefs with the Referee in order to assist the Referee in reaching a determination as to whether or not [fol. 41] said claim of homestead should be allowed as requested by the homestead declarant.

The attorney for the declarant having on April 20th, 1922, filed a formal petition for the allowance of said claim and on said date having also filed a brief, and Mr. Leeper, attorney for said Farmers Bank, and also at the request of the Referee, acting as attorney for the trustee, S. D. White, and the referee having examined said petition and considered said briefs and being now advised in the premises finds, concludes and orders as follows:

1. That under the United States Statute commonly known as the Bankruptcy Act, only such claims can be made for homesteads and exemptions as such exemptions and homesteads are allowed under a state statute.

2. That it does not clearly appear from said petition for allowance of homestead whether or not the land claimed as homestead is community property of the said Peter Stump and Veta Stump, his wife, or whether it is or was the separate property of the bankrupt at the time of the filing of the petition in bankruptcy, February 2d, 1922.

3. That up to the time of the filing of the petition in bankruptcy, no homestead declaration had ever been filed on said property either by the bankrupt or his wife and no claim or declaration of homestead had ever been filed or made except said declaration and claim of March 1st, 1922, and filed with the Recorder of Nez Perce County, Idaho, March 28th, 1922, by the wife, the said Veta Stump.

[fol. 42] 4. That the legal effect of the filing of said petition in bankruptcy on February 2d, 1922, and the adjudication on February 6th, 1922, by the Referee, of the said Peter Stump as a bankrupt, was to place all the property of the said Peter Stump as of date, February 2d, 1922, in the custody of the law in like manner as though an attachment had been levied on the real property above described by a creditor or creditors for the total amount of the unsecured indebtedness of the said Peter Stump, and that by the filing of such petition and adjudication in bankruptcy, the said unsecured creditors in legal effect obtained a lien for the amount of their claims against the land above described.

5. That the lien of said unsecured creditors or the trustee in bankruptcy is superior in right and prior in time to the claim of homestead made by the wife of the bankrupt, Veta Stump.

6. If the real property above described was at the date of the filing of the petition in bankruptcy the separate property of the said Peter Stump, he had the right to sell and dispose of the same without the wife joining in such conveyance; if said real property was at said time community property, it was subject to attachment for the debts of the said Peter Stump as well as to attachment for the community

debts of the said Peter Stump and Veta Stump, his wife; and under Section 47a (2) of the Bankruptcy Act, the property of the bankrupt, after the adjudication, goes to the trustee as though vested with [fol. 43] all of the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings.

It is, therefore, ordered by the Court that said claim of homestead is disallowed as a priority over the claims of general creditors of the bankrupt, but is allowed as a homestead subject to said claims of the general creditors. This order does not affect nor is it intended to affect any lien created by the acts of the said Peter Stump and Veta Stump prior to the filing of said petition in bankruptcy, such as the mortgage of Fifty-five Hundred (\$5,500.00) given by them to the Federal Land Bank or like liens or like claims, should said mortgage and like claims hereafter be held to be valid liens superior in right and prior in time to the claims of general creditors.

Under Rule XVIII of the Bankruptcy Rules of the United States District Court for the District of Idaho, it is hereby ordered that if the said bankrupt or the said Veta Stump desire to file a petition for a review of the orders herein made, that such petition be filed within ten days from date hereof; or if further time is desired, that a request for such further time be made within said ten day period.

Dated at Lewiston, in the County of Nez Perce, State of Idaho, this 28th day of April, 1922.

Chas. H. Chance, Referee in Bankruptcy.

[File endorsement omitted.]

[fol. 44] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF IDAHO, CENTRAL DIVISION

[Title omitted]

MOTION FOR ORDER EXTENDING TIME FOR APPEAL—Filed May 6,
1922

Comes now James L. Harn and Clay McNamee, attorneys for the above-named bankrupt, and move the Honorable Charles H. Chance, Referee in Bankruptcy for said district, that the above-named bankrupt be granted ten days' additional time in which to prepare, serve and file herein necessary papers on appeal from that certain order herein made by said referee in bankruptcy on April 28th, 1922, denying to Veta Stump, the wife of said bankrupt, her claim to exempt from bankruptcy her homestead claim in and to the lands listed by said bankrupt in his petition and schedules herein filed.

Dated at Lewiston, Idaho, this 6th day of May, 1922.

James L. Harn, Clay McNamee, Attorneys for Bankrupt.
Residence and postoffice address, Lewiston, Idaho.

[File endorsement omitted.]

[fol. 45] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF IDAHO, CENTRAL DIVISION

[Title omitted]

ORDER EXTENDING TIME FOR APPEAL—Filed May 6, 1922

Upon application of Messrs. James L. Harn and Clay McNamee, attorneys for the above-named bankrupt, and for good cause shown,

It is hereby ordered that in addition to the time allowed for review herein the above-named bankrupt be and is hereby granted ten days' additional time within which to file petition for review from that certain order made and entered herein on April 28th, 1922, in which said order the homestead claim of Veta Stump, wife of said bankrupt, was denied and in which said order the claim of said bankrupt for a homestead declaration filed by his said wife, Veta Stump, was denied.

Dated at Lewiston, Idaho, this 6th day of May, 1922.

Charles H. Chance, Referee in Bankruptcy.

[File endorsement omitted.]

[fol. 46] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF IDAHO, CENTRAL DIVISION

In Bankruptcy

#1539

[Title omitted]

PETITION OF VETA STUMP FOR REVIEW OF ORDER OF REFEREE—Filed
May 16, 1922

Comes now the petitioner, Veta Stump, the wife of Pete Stump, and respectfully petitions the above-entitled Court for a review and modification of the order of the referee herein disallowing the homestead exemption of said petitioner, and as grounds and cause of said review states that the order of the referee filed herein on the 28th day of April, 1922, is, as petitioner is informed and believes, not in accordance with the law and the facts in the premises, and petitioner further represents:

I

That at all times herein mentioned this petitioner and Pete Stump were husband and wife and that on February 2d, 1922, said Pete Stump filed in this court a petition in bankruptcy and was on February 6th, 1922, duly adjudged a bankrupt.

II

That under and by virtue of the Bankruptcy Act and the laws of the state of Idaho this petitioner appeared in said bankruptcy proceedings by filing her petition herein for her exemptions of \$5,000.00 in value, as will appear more fully by said petition which is on file in this case and which is hereby referred to and by reference made [fol. 47] a part hereof the same as if said petition was fully set out herein.

III

That a homestead declaration was duly filed by petitioner on the 28th day of March, 1922, with the Auditor of Nez Perce County, Idaho, on community property of the parties hereto, which property was obtained from W. D. Lord and Margaret Lord on October 18th, 1920, by that certain deed recorded November 19th, 1920, in Book 129 of Deeds at page 138, Records of Nez Perce County, Idaho, which declaration of homestead is on file herein and by reference made a part hereof.

IV

That the referee herein held a hearing on petitioner's claim for her exemption and on April 28th, 1922, made his findings and conclusions and entered an order disallowing said claim, which order is on file in this matter and is hereby referred to and by reference made a part hereof the same as if said order was fully and specifically set forth in this petition for review.

V

That before filing her claim for her homestead exemption the petitioner and her husband sought advice from counsel and were advised by counsel that all was being done that was necessary to be done to protect her homestead rights. That petitioner and her husband are farmers and not familiar with law or procedure in regard to claiming homestead rights. That petitioner followed the advice of her counsel and if any error in regard to time or otherwise has [fol. 48] been made in the filing and claiming of said homestead that such error was made through the mistaken advice of said counsel.

VI

That the findings and conclusions of the referee set forth in paragraphs 2, 4, and 5, and that part of paragraph 6 which reads as follows, "Under Section 47a (2) of the Bankruptcy Act the property of the bankrupt after the adjudication goes to the trustee as though vested with all of the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings," are erroneous and were objected to at the time of the hearing and are now excepted to herein, as being contrary to both the facts and law in the premises.

VII

That petitioner and Pete Stump were married July 7th, 1917, and ever since have been and now are husband and wife and have as the issue of their marriage three minor children, that the land and premises claimed as such homestead was paid for with community funds earned by the joint efforts of the petitioner and her said husband.

That the errors complained of and objected to are as follows:

A

That the referee erred in not specifically finding in paragraph 2 of his findings that the homestead mentioned herein was the community property of the petitioner and her husband, Pete Stump.

B

That said referee erred in his findings No. 4, and that instead of [fol. 49] said finding No. 4 the referee should have found that the claim of petition was a valid, subsisting and legal claim of homestead and that an order should have been made setting aside said exemption to petitioner.

C

That the referee erred in finding No. 5, and that instead of finding No. 5 the referee's order should have provided that the petitioner's claim of homestead is superior in right to all unsecured claims of creditors in these bankruptcy proceedings.

D

That the referee erred in that part of paragraph 6 of his findings which reads as follows: "Under Section 47a (2) of the Bankruptcy Act the property of the bankrupt after the adjudication goes to the trustee as though vested with all of the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings," and that instead of that part of paragraph 6 the referee should have found and ordered that petitioner was entitled to her exemption and that said exemption should have been set aside to said petitioner without further proceedings.

Wherefore, petitioner prays that the above-entitled Court review said order of the referee in all respects wherein said referee disallowed said homestead exemption, and take any additional evidence deemed advisable by the Court, and that the schedule of the bankrupt proceedings herein be amended to include said claim of homestead exemption to this petitioner and that the referee be instructed [fol. 50] to set apart said homestead as exempt to said petitioner or

that the Court set same aside as provided by the Bankruptcy Act and by the laws of the State of Idaho.

For such other and further relief as to the Court may seem just and equitable in the premises.

Clay McNamee, James L. Harn, Harve H. Phipps, Attorneys
for Petitioner.

UNITED STATES OF AMERICA,
Central Division,
District of Idaho, ss:

I, Veta Stump, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Veta Stump, Petitioner.

Subscribed and sworn to before me this 16th day of May,
A. D. 1922. James L. Harn, Notary Public in and for the
State of Idaho, Residing at Lewiston, Therein. [N. P.
Seal.]

[File endorsement omitted.]

[fol. 51] IN THE DISTRICT COURT FOR THE DISTRICT OF IDAHO,
CENTRAL DIVISION

[Title Omitted]

MEMORANDUM DECISION OF REVIEW OF ORDER OF REFEREE DENYING
EXEMPTION OF HOMESTEAD TO WIFE OF BANKRUPT—Filed June
28, 1922

Tannahill & Leeper, Attorneys for Trustee.

Harve H. Phipps, James L. Harn, and McNamee & Clements,
Attorneys for Petitioner.

DIETERICH, District Judge:

Persuasively and with much force it is argued for the trustee that inasmuch as no declaration of homestead on the property in question had been made at the time of the adjudication, it was subject to attachment, and that the order of adjudication was in effect an attachment for the benefit of all creditors, and that accordingly the declaration of homestead subsequently made was subordinate to such lien and the property was subject to administration in bankruptcy to the extent of the lien. But I am inclined to think that in principle, Brandt vs. Mayhew (9th C. C. A.), 218 Fed. 422, is controlling against this position. True the state laws are to be looked to for the measure of the bankrupt's substantive exemption rights,

[fol. 52] and in one respect the California statutes differ from those of Idaho. But having regard for the principle and reasoning of the Brandt-Mayhew case, the difference is not thought to be highly material. In both states precisely the same procedure is required before land occupied as a home, becomes exempt and in both states either the husband or the wife may make the requisite declaration. In both states property so occupied and formally claimed as a homestead is, as a general rule, exempt from execution or forced sale. In both states, however, there are exceptions to the rule, and sale may be had upon execution, to satisfy decrees foreclosing liens of mechanics, laborers, and vendors, or mortgages properly executed either before or after the declaration of homestead, and to satisfy judgments procured and recorded so as to constitute a lien prior to the declaration; and in Idaho there is the added provision that such property may be sold on execution to satisfy a judgment entered after the recording of the declaration, provided attachment in the suit was levied prior to the declaration. Technically, it is to be noted, this distinctive exception has no application here, for literally there was neither attachment, judgment, nor execution. For certain purposes, to be sure, an adjudication in bankruptcy may be regarded as in effect an attachment, and certain proceedings in the course of administration as the equivalent of a judgment and execution, but it may be seriously doubted whether so broad a meaning should be imported into a state statute defining exceptions to a general provision [fol. 53] vision of exemption. In inserting the distinctive exception in the general provision (which was doubtless taken from the California code) it is to be assumed that the legislature had in mind the provisional remedy of attachment as defined in the Idaho Code, and considered that the lien of the judgment in such a case should be deemed to relate back to the lien of the attachment. It is wholly improbable that a constructive lien such as is effected by an adjudication in bankruptcy was contemplated. Moreover, only creditors of certain classes can avail themselves of the provisional remedy of attachment under the state statute, whereas, if the trustee's contention here should be sustained, the debtor's right to declare a homestead would be cut off in favor not only of creditors who had the right to attach, but also in favor of those who could not have attached under the state statutes, even if bankruptcy proceedings had not been instituted.

But however that may be, the rule of the Brandt-Mayhew case rests upon a more substantial basis,—considerations that have little, if any relation to the distinctive feature of the Idaho statutes. The fundamental question in that case was whether the status of property at the precise time of the adjudication in bankruptcy is to be taken as the criterion of the bankrupt's right to have it set apart as exempt, and the answer was in the negative. Much is to be said for the contrary view as maintained in the dissenting opinion, but of course we are to follow the majority decision, and, notwithstanding the [fol. 54] provisions of the bankruptcy act (Sec. 70a) vesting in the trustee in bankruptcy as of the date of the adjudication, the title to all property of the bankrupt except such as is exempt, and the

further provisions (47a (2,) amended,) vesting in the trustee (as to all property coming into the custody of the bankruptcy court) all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon, and also vesting in him (as to all property not in the custody of the court) the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied, it was there held that the bankrupt or his wife had the right, within a reasonable time after the adjudication, to file the declaration required by the state statute, and thereupon to claim the property as exempt from administration. In effect it is held that by the adjudication the trustee and the creditors acquire no permanent title or absolute lien upon property that the bankrupt may render or might have rendered exempt by complying with certain procedural conditions, provided that within a reasonable time after adjudication he complies with such requirements and makes appropriate and seasonable claim of exemption.

Applying the principle here, it must be held that the adjudication did not necessarily cut off the right of the bankrupt or his wife to file the requisite declaration of homestead and to claim the property as exempt.

Nor was the failure of the bankrupt to claim exemption in his [fol. 55] petition and schedules necessarily conclusive either against him or his wife. *Brandt vs. Mayhew*, *supra*.

The order complained of will therefore be set aside, with instruction to the referee to take further proceedings not out of harmony with the views herein expressed.

To avoid any possible misapprehension, it should be added that nothing herein should be construed as implying the view that in fact the bankrupt and his wife have not waived or lost their right by waiver, estoppel, neglect, or delay. What place should be given to these considerations is a question that must await a disclosure of all of the facts, if such issues are tendered and tried out in due course.

[File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT
OF IDAHO, CENTRAL DIVISION

[Title Omitted]

ASSIGNMENT OF ERRORS OF LAW—Filed July 15, 1922

The petitioner, Samuel D. White, trustee of the estate of Pete Stump, Bankrupt, in connection with a petition to review and revise in matter of law the decision of this Honorable Court granting homestead exemption in favor of Veta Stump, makes the following assignment of error which he avers occurred in the decision of the said matter.

The Court erred in reversing the decision of the Honorable Charles H. Chance, referee in bankruptcy, and erred in his decision allowing a homestead exemption to Veta Stump, in the sum of \$5,000.00.

We hereby certify that the foregoing assignment of error is made on behalf of the petitioner for a writ of review and revision herein, and is in our opinion well taken, and the same now constitutes the assignments of error upon the writ prayed for.

Tannahill & Leeper, By Robert D. Leeper, Attorneys for
Petitioner Samuel D. White, Trustee. Residence and P. O.
Address, Lewiston, Idaho.

[File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT
OF IDAHO, CENTRAL DIVISION

[Title Omitted]

APPLICATION FOR PREPARATION OF TRANSCRIPT—Filed July 15, 1922

To the Honorable F. S. Dietrich, judge of the court aforesaid:

The undersigned, Samuel D. White, trustee of the above-entitled estate, hereby respectfully shows to the Court that he desires to [fol. 57] make application to the Circuit Court of Appeals of the United States, for the Ninth Circuit, for a revision of that certain decision and order made and entered in the said matter, whereby an exemption in the sum of \$5,000.00 was allowed to Veta Stump out of the estate of the said bankrupt.

The applicant further shows that it is necessary to transmit with the petition for revision a certified transcript of the record in the said case.

Wherefore, your applicant respectfully prays that this Court direct the immediate preparation of a certified copy of the said decision and judgment and of the record in this case pertinent to the same, and that such certified copy be delivered to the attorney for the petitioner forthwith for the purpose of lodging the same in the Circuit Court of Appeals for the Ninth Circuit.

Dated this 10th day of July, 1922.

Samuel D. White, Petitioner. Tannahill & Leeper, By
Robert D. Leeper, Attorney for Petitioner, Samuel D.
White, Trustee. Residence and P. O. Address, Lewiston,
Idaho.

[File endorsement omitted.]

[fols. 58-61] CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRAN-
SCRIPT OF RECORD

UNITED STATES OF AMERICA,
District of Idaho, ss:

I, W. D. McReynolds, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copies of petition and schedules, certification of question to be reviewed by the Judge, memorandum decision on review of order of referee denying exemption of homestead to wife of bankrupt, assignment of errors and application for preparation of transcript in the matter of Pete Stump, bankrupt, have been by me compared with the originals, and that it is a correct transcript therefrom and of the whole of such originals as the same appears of record and on the file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said court in said District this 20th day of July, 1922.

W. D. McReynolds, Clerk, By Pearl E. Zanger, Deputy.
(Seal.)

[File endorsement omitted.]

[fol. 62] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 3904

[Title omitted]

[fol. 63] At a stated term, to wit, the October term, A. D. 1922 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the seventeenth day of October, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable William B. Gilbert, senior circuit judge, presiding; the Honorable William H. Hunt, circuit judge; the Honorable Charles E. Wolverton, district judge.

No. 3904

In the Matter of the Estate of PETE STUMP, Bankrupt
SAMUEL D. WHITE, as Trustee of the Estate of Pete Stump, Bankrupt, Petitioner,

vs.

VETA STUMP, Respondent.

ORDER OF SUBMISSION

Pursuant to telegraphic request of counsel for the respective parties this day filed ordered above-entitled matter submitted to the Court for consideration and decision on briefs on file.

[fol. 64] At a stated term, to wit, the October term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the city and county of San Francisco, in the State of California, on Monday, the thirtieth day of October, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable William B. Gilbert, senior circuit judge, presiding; the Honorable William H. Hunt, circuit judge; the Honorable Charles E. Wolverton, district judge.

[Title omitted]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

By direction of the Honorable William B. Gilbert and William H. Hunt, Circuit Judges, and the Honorable Charles E. Wolverton, District Judge, before whom the cause was heard, ordered that the type-written opinion this day rendered by this Court in the above-entitled [fol. 65] cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court, in accordance with said opinion.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

[Title omitted]

Petition for Revision under Section 24b of the Bankruptcy Act, to
Revise, in Matter of Law, a Certain Order of the United States
District Court for the District of Idaho, Central Division.

Before Gilbert and Hunt, Circuit Judges, and Wolverton, District
Judge

OPINION U. S. CIRCUIT COURT OF APPEALS—Filed Oct. 30, 1922

WOLVERTON, District Judge:

The record shows that Pete Stump filed his voluntary petition in bankruptcy February 2, 1922, and was adjudged a bankrupt February 6th. The usual schedules accompanied the petition. Among [fol. 66] the assets listed was a parcel of real property known as the northeast quarter of section 31, township 38 north, range 1 west. The bankrupt claimed certain personal property aggregating \$865 as exempt, but made no claim for homestead exemption. On March 1, 1922, Veta Stump, wife of the bankrupt, made and acknowledged her declaration selecting and claiming the above-described realty as a homestead for the joint benefit of herself, her husband, and three minor children. The declaration was filed and recorded in the county recorder's office on March 28, 1922. At the adjourned first meeting of creditors, April 8, 1922, Veta Stump, through her attorney, submitted to the referee in bankruptcy her claim in writing praying that the homestead be set apart to her out of the assets of the estate. The pleadings of the parties were later formulated, and the briefs of counsel having been submitted, the referee made and entered on April 28, 1922, an order disallowing the claim of homestead except subject to the claims of the general creditors.

From this order a review was prosecuted by Veta Stump to the District Court, resulting in its being set aside, with instructions to the referee to take further proceedings not out of harmony with the views of the Court then expressed.

The cause is here on petition of the trustee for revision of the order of the District Court thus rendered.

The question presented by this record is whether Veta Stump is [fol. 67] entitled to the homestead exemption selected and claimed by her for the joint benefit of herself, husband, and minor children.

Under the Idaho statutes the homestead includes: "The dwelling house in which the claimant resides, and the land on which the same is situated and located as in this act provided; also the proceeds thereof in the event of a voluntary sale, and also the insurance thereon, if any, in the event of a loss." Section 5437, Idaho Com-

piled Statutes, 1919. "The homestead is subject to execution or forced sale in satisfaction of judgments obtained.

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises; or in an action in which an attachment was levied upon the premises before the filing of such declaration.

2. On debts secured by mechanic, laborer or vendor's liens upon the premises.

3. On debts secured by mortgages upon the premises, executed and acknowledged by the husband and wife or by an unmarried claimant.

4. On debts secured by mortgages upon the premises, executed and recorded before the declaration of homestead was filed for record." Section 5441.

"In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife, must execute and acknowledge, in the same manner as a conveyance of real property is acknowledged, a declaration of homestead, and file the same for record." Section 5462.

[fol. 68] "The declaration of homestead must contain:

1. A statement showing that the person making it is the head of a family; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit.

2. A statement that the person making it is residing on the premises and claims them as a homestead.

3. A description of the premises.

4. An estimate of their actual cash value." Section 5463.

"The declaration for homestead must be recorded in the office of the recorded of the county in which the land is situated." Section 5464.

It is no longer to be disputed that "the exclusive jurisdiction of the bankruptcy court is so far in rem that the estate is regarded as in custodia legis from the filing of the petition." *Acme Harvester Co. vs. Beekman Lumber Co.*, 222 U. S. 300, 307. Or that under section 47a, clause 2, the trustee acquires the status of a creditor having a lien as of the time when the petition in bankruptcy is filed. *Bailey vs. Baker Ice Machine Co.*, 239 U. S. 268, 275, 276.

Counsel for the trustee urges with much persuasion that the status thus acquired by the trustee is the equivalent of a judgment or attachment in the State court antedating the declaration of a homestead. [fol. 69] First, let it be premised that exemptions to which the

bankrupt is entitled are fixed and defined by the laws of the state in which he has his domicile, but the time and manner of claiming, selecting and allowance of exemptions are matters wholly within the jurisdiction and control of the bankruptcy courts. Further, under section 7a, clause 8, the voluntary bankrupt is required to prepare and file with his petition for bankruptcy a schedule of his assets and liabilities which shall contain "a claim for such exemptions as he may be entitled to." These claims may be amended if seasonably done. In *re Webb*, 219 Fed. 349, 350. Or if by oversight the claim for homestead is omitted from the schedule, it may be amended if timely application therefor is made to the Court. In *re Maxon*, 170 Fed. 356.

Now, as to the contention of counsel: This Court has in *Brandt vs. Mayhew*, 218 Fed. 422, declared that the purpose of the amendment to section 47a, which is now comprised by clause 2 of such section, was to make effective the rights of creditors against those who claimed secret or unrecorded liens or adverse interests in the property of the bankrupt; and that it did not effect the provisions of section 6 of the act, which guarantees to the bankrupt the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in bankruptcy. So in that case, which was one where on August 17, 1912, an involuntary petition in bankruptcy was filed against the husband, who was adjudged a bankrupt October [fol. 70] 8th; on November 4, 1912, the wife recorded a declaration of homestead; on November 20th she filed with the referee a petition for an order setting apart the homestead claimed; on January 10, 1913, the trustee filed an inventory of the assets of the estate, including therein the property claimed as a homestead, and on February 17th the bankrupt filed schedules and therein made claim to an exemption of \$5,000 in value of the real estate upon which his wife filed the declaration of homestead; it was held that the homestead was properly set apart to the claimants. This in view of the California statutes, which as they relate to the selection of homesteads, differ but little, but not materially, in so far as the principle involved is concerned, from the Idaho statutes. In both the homestead is subject to execution in satisfaction of judgments obtained before the declaration of homestead was filed for record. But in the Idaho statutes it is also subject to attachment leveled prior to its filing for record. The claim of homestead of the wife of Mayhew was initiated subsequent to the filing of the petition in bankruptcy against her husband; but it was determined, in effect, that the status of the trustee having a lien from the time of the filing of the petition in bankruptcy did not operate to deprive the wife of her homestead. The status of the trustee is regulated by the bankruptcy act. The liens by judgment or attachment derive their potency from the state statutes. But in neither the Mayhew nor in the present case were [fol. 71] there any such liens obtained prior to the filing of the petition in bankruptcy, or the initiation of the claim of homestead.

There is a distinction between the Mayhew case and the present. This is one of voluntary bankruptcy. The bankrupt filed his schedule along with his petition, and while he claimed certain per-

sonal property as exempt, he did not claim a homestead exemption; nor was any declaration of homestead made and filed until nearly two months thereafter. The husband not having made selection of a homestead, the wife, as the statute authorized her to do, exercised the right, and upon filing the same with the recorder, soon thereafter applied to the referee for an order setting the homestead apart for the benefit of herself, husband and minor children. The distinction, however, is not regarded as vital. By a certificate of the referee of May 16, 1922, it appears that the bankrupt himself submitted to the referee the claim of homestead selected by Veta, his wife, for allowance, and that a question arose as to whether an amendment to the petition in bankruptcy should be allowed, but there is no specific statement as to how it was disposed of.

It would seem but just and equitable to the wife under the conditions attending the record that the homestead should be set apart as prayed. Obviously, it is the intendment and purpose of the Idaho statute to provide the wife with the means of selecting the homestead in case the husband for any reason fails to make such selection. It was designed for her protection and support, [fol.72] and that of her family, and such statutes are liberally construed to the end that the purpose may be adequately effectuated. *Coughanour vs. Hoffman's Estate*, 2 Idaho, 267; *Smith vs. Thompson*, 213 Fed. 335. While it was the husband's primary authority and duty to claim the homestead if he so desired, and to make the claim at the time of filing his petition in bankruptcy, the fact remains that he did not do it; nor did he make any selection or attempt to do so. Thereupon the wife made the selection, and in seasonable time applied to the referee to have the homestead set apart to her from the assets of the estate. She could do nothing else for her protection; and not being a party to the bankruptcy proceedings, it was the only thing she could do to secure the homestead for the benefit of herself and family. In *Coughanour vs. Hoffman's Estate*, supra, where, the statute required that the selection be made by the husband and wife, or either of them, it was held that the widow was entitled to make the selection after the decease of the husband.

It is further insisted that as the creditors by the filing of the petition in bankruptcy are deprived of their right to proceed against the property of the bankrupt by levy of attachment or other mode of acquiring an involuntary lien for subjecting the property to execution and sale, the bankrupt and his privies are thereafter estopped to claim a homestead from the assets. This does not follow. As we have seen, the time and manner of claiming the exemption is regulated by the [fol. 73] bankruptcy act, and there can be no estoppel so long as the bankrupt is afforded a remedy in pursuance of such act. The cases of *In re Boyd*, 120 Fed. 999, and *In re Phillips*, 209 Fed. 490, are without application.

These considerations lead to an affirmance of the order and judgment of the court below, and it is so ordered.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

[Title omitted]

Petition for Revision, under Section 246 of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the District of Idaho, Central Division.

JUDGMENT U. S. CIRCUIT COURT OF APPEALS—Filed Oct. 30, 1922

[fol. 74] The above-entitled matter came on to be heard on the said petition for revision, and on the transcript of the record filed in support thereof, and was duly submitted to the Court for consideration and decision:

On consideration whereof, it is now here ordered and adjudged by this Court that the order and judgment of the said District Court in this matter be, and hereby is affirmed, with costs in favor of the respondent and against the petitioner.

It is further ordered and adjudged by this Court that the respondent recover against the petitioner for her costs herein expended, and have execution therefor.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

[Title omitted]

ORDER STAYING MANDATE—Filed Nov. 29, 1922

Upon telegraphic application of counsel for the petitioner, and [fol. 75] good cause therefor appearing, ordered mandate stayed for a period of thirty (30) days from and after December 1, 1922, on condition that petition for writ of certiorari be filed with the Clerk of the Supreme Court within the time extended, and in that event that the mandate of this court be stayed until after the Supreme Court of the United States passes upon said petition.

Dated: San Francisco, California, November 29, 1922.

W. H. Hunt, United States Circuit Judge.

[Telegram]

Received at 205 Market Street.
Sutter 4321, Local 122.
173SF. ZP 36 Blue.

Lewiston, Ida., 2.08 P. Nov. 29, 1922.

F. D. Monckton,
Clerk Circuit Court of Appeals,
San Francisco, Calif.:

Applying to supreme court for writ of certiorari in case White vs. Stump No. 3904 You are directed to prepare and forward transcript Necessary papers following Request mandate to lower court be stayed.

Tannahill and Leeper. 249P.

[File endorsement omitted.]

[fol. 76] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

[Title omitted]

CERTIFICATE OF CLERK

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-five (75) pages, numbered from and including 1 to and including 75, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the petitioner, and certified under section 3 of Rule 37 of the rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

[fol. 77] Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 5th day of December, A. D. 1922.

F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.
[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

[fol. 78] WRIT OF CERTIORARI AND RETURN—Filed April 9, 1923

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Samuel D. White, as Trustee of the Estate of Pete Stump, Bankrupt, is petitioner, and Veta Stump is respondent, No. 3904, which suit was removed into the said Circuit Court of Appeals by virtue of a petition to revise an order of the District Court of the United States for the District of Idaho, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby [fol. 79] command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twelfth day of March, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[fol. 80] [File endorsement omitted.]

[fol. 81] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 3904

[Title omitted]

STIPULATION ACCEPTING TRANSCRIPT IN SUPREME COURT AS A RETURN TO THE WRIT OF CERTIORARI AND FOR SUBMISSION UPON WRITTEN BRIEFS AND ARGUMENTS ON FILE IN SUPREME COURT AND WAIVER OF HEARING

The petition for a writ of certiorari having been granted herein, Come now the respective parties, by their attorneys, and within ninety days from and after the initiation of this cause in the Supreme Court in the October, 1922, term thereof, and stipulate that this cause shall be submitted to the Honorable Supreme Court upon the printed briefs and arguments already on file therein, hereby giving oral argument, hearing and notice of hearing, and consent-

ing that the cause shall be decided by this Honorable Court forthwith, and as soon as it may properly come before it, and consenting that the transcript of record already on file in the U. S. Supreme Court on the Petition for Certiorari (Case No. 777 therein) shall be taken as a full, complete and sufficient return to the Writ of Certiorari issued March 12, 1923, from said Supreme Court to the Honorable Judges of said United States Circuit Court of Appeals.

Samuel O. Tannahill, Robert D. Leeper, Empire National Bank Building, Lewiston, Idaho; James E. Babb, Lewiston National Bank Bldg., Lewiston, Idaho, Attorneys for Petitioner. Harve H. Phipps, Sherwood Building, Spokane, Wash., Attorney for Respondent. James E. Babb, Of Counsel for Petitioner.

[File endorsement omitted.]

[fol. 82] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 3904

[Title omitted]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS TO STIPULATION AS TO RETURN TO WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE UNITED STATES

I, Frank D. Monekton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the preceding page to be a full, true and correct copy of a "Stipulation Accepting Transcript in Supreme Court as a Return to the Writ of Certiorari and for Submission upon Written Briefs and Arguments on File in Supreme Court and Waiver of Hearing," filed in the above entitled cause on the 27th day of March, A. D. 1923, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of March, A. D. 1923.

F. D. Monekton, Clerk, By Paul P. O'Brien, Deputy Clerk.
[Seal of the United States Circuit Court of Appeals, Ninth Circuit.]

[fol. 83] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

[Title omitted]

RETURN TO WRIT OF CERTIORARI

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ and send to the said Supreme Court a certified copy of a "Stipulation Accepting Transcript in Supreme Court as a Return to the Writ of Certiorari and for Submission upon Written Briefs and Arguments on file in Supreme Court and Waiver of Hearing," in which said stipulation it is provided that the certified Transcript of the Record heretofore filed by the petitioner in said cause in the said Supreme Court as a part of its petition for a Writ of Certiorari may be taken as the Return to the said Writ of Certiorari, the original of which stipulation was filed in my office on the 27th day of March, A. D. 1923.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of March, A. D. 1923.

F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

[Seal of the United States Circuit Court of Appeals, Ninth Circuit.]

[File endorsement omitted.]

[fol. 84] [File endorsement omitted.]

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF

THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

LONDON

Printed by J. Streater, at the

Sign of the Sun, in St. Dunstons Church-yard

1679

By Authority

Printed by J. Streater, at the

Sign of the Sun, in St. Dunstons Church-yard

1679

By Authority

JAN 3 1923

WM. R. STANSBURY
CLERK

No. ~~77156~~ 20

IN THE
SUPREME COURT
OF THE
UNITED STATES

In the Matter of PETE STUMP, Bankrupt,
SAMUEL D. WHITE, Trustee,

Petitioner,

VS

VETA STUMP,

Respondent,

PETITION FOR WRIT OF CERTIORARI, TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, REQUIRING IT TO CERTIFY TO THE SUPREME COURT OF THE UNITED STATE, FOR ITS REVISION AND DETERMINATION, THE PETITION FOR REVIEW IN BANKRUPTCY TAKEN BY SAID SAMUEL D. WHITE, TRUSTEE IN BANKRUPTCY OF PETE STUMP, IN THE MATTER OF VETA STUMP VS. SAMUEL D. WHITE, TRUSTEE, LATELY PENDING IN SAID COURT OF APPEALS; TOGETHER WITH BRIEF IN SUPPORT THEREOF, MOTION AND NOTICE THEREOF, AND REQUEST FOR SUBMISSION.

SAMUEL O. TANNAHILL,
ROBERT D. LEEPER,
Empire National Bank Building,
Lewiston, Idaho.

✓ JAMES E. BABB,
Lewiston National Bank Building,
Lewiston, Idaho.

JAMES E. BABB, Attorneys for Petitioner.
Of Counsel for Petitioner.

No.....

IN THE

SUPREME COURT

OF THE

UNITED STATES

In the Matter of PETE STUMP, Bankrupt,
SAMUEL D. WHITE, Trustee,

Petitioner,

vs

VETA STUMP,

Respondent,

PETITION FOR WRIT OF CERTIORARI, TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, REQUIRING IT TO CERTIFY TO THE SUPREME COURT OF THE UNITED STATE, FOR ITS REVISION AND DETERMINATION, THE PETITION FOR REVIEW IN BANKRUPTCY TAKEN BY SAID SAMUEL D. WHITE, TRUSTEE IN BANKRUPTCY OF PETE STUMP, IN THE MATTER OF VETA STUMP VS. SAMUEL D. WHITE, TRUSTEE, LATELY PENDING IN SAID COURT OF APPEALS; TOGETHER WITH BRIEF IN SUPPORT THEREOF, MOTION AND NOTICE THEREOF, AND REQUEST FOR SUBMISSION.

SAMUEL O. TANNAHILL,
ROBERT D. LEEPER,
Empire National Bank Building,
Lewiston, Idaho.

JAMES E. BABB,
Lewiston National Bank Building,
Lewiston, Idaho.

JAMES E. BABB,
Of Counsel for Petitioner.

Attorneys for Petitioner.

IN THE
SUPREME COURT
OF THE
UNITED STATES

Is the Matter of PETE STUMP, Bankrupt,
SAMUEL D. WHITE, Trustee,
Petitioner,

vs

WETA STUMP,
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT, BEARING IT TO SET
TRY TO THE SUPREME COURT OF THE UNITED
STATE FOR REVISION AND DETERMINATION
THE PETITION FOR WRIT IN BANKRUPTCY
TAKEN BY SAID SAMUEL D. WHITE, TRUSTEE IN
BANKRUPTCY OF PETE STUMP, IN THE MATTER
OF WETA STUMP, vs SAMUEL D. WHITE, TRUSTEE
THE LATTER BEING IN SAID COURT ON AP-
PEAL, TOGETHER WITH BRIEF IN SUPPORT
THEREOF, MOTION AND NOTICE THEREOF, AND
REQUEST FOR SUBMISSION.

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INDEX

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SUBJECT INDEX

	Page
PETITION FOR WRIT	4 to 16
Treating:	
a. Statement of Facts	5 to 7
b. Laws of Idaho (haec verba) relating to Homestead exemption	7 to 8
c. Bankruptcy Act (haec verba) pertinent to issue.....	8 to 9
d. Trustee's Rights in real Property against exemption created after filing petition, citing cases 9 to 11	
e. Conflict in lower courts, whether, statutory declaration of homestead upon real property after filing of petition in bankruptcy is effective against Trustee	11 to 14

ii.

BRIEF SUPPORTING PETITION 17 to 45

Treating:

- a. Assignment of error 21
- b. Summary of points and authorities 17 to 19
- c. The Status of the Property 22 to 23
- d. Inability, retroactively, to divest title of trustee.... 23 to 27
- e. Effect of filing Petition in Bankruptcy 27 to 31
- f. Statutory Homestead an estate as well as an exemption 31 to 34
- g. After filing Petition in Bankruptcy neither the bankrupt nor his wife can file a Declaration of Homestead upon real Property owned by them at the date of such filing..... 34 to 39
- h. Estoppel of Bankrupt 39 to 41
- i. Effect of Filing Petition 41 to 44

INDEX TO CITATIONS

A.

Acme Harvester Company vs. Beekman Lumber Company, 222 U. S. 300, 56 L. Ed. 213 (Filing a Petition in Effect Attachment and Caveat) cited pp. 9, 18, 19, 20, 27, 36, 43.

B.

Bailey vs. Baker Ice Machine Company, 239 U. S. 268, 60 L. Ed. 275(Line of Cleavage is date of Filing Petition) cited pp. 9, 18, 19, 20, 28, 36, 43.

Boyd, in re 120 Fed. 999 (Bankrupt is Estopped) cited p. 19, 41.

Barber vs. Babel, 36 Cal| 11 (Homestead is vested Estate) cited p. 18, 32, 33.

iii.

Burbank vs. Kirby, 6 Idaho 210, 55 Pac. 295 (Declaration of Homestead must be Recorded) cited p. 17, 25, 26.

Brandt vs. Mayhew, 218 Fed. 422, (Criticized and distinguished) cited p. 35, 41, 42.

Bankruptcy Act, Section 6, cited p. 35, 41, 42, 19, 20. Quoted in full p. 8. Section 7 (paragraph 8) cited p. 34, 36, quoted in full p. 8. Section 47a, cited p. 19, 20, 22, 28, 29, 30, 34, 36, 38, 41, 42, quoted in full p. 8-9. Section 70a, cited p. 19, 20, 22, 30, 34, 36, 38, 42, 43, quoted in full p. 8-9.

E.

Edgington v. Taylor 270 Fed. 48 (A Declaration of Homestead must be recorded prior to filing Petition) cited p. 12, 19, 38, 39.

Everett vs. Judson, 228 U. S. 477, 57 L. Ed. 297 (Line of Cleavage for all purposes date of filing Petition) cited p. 20, 43.

F.

Fritts vs. Fritts, 298 Illinois 314, 131 N. E. 584 (Homestead is Estate in Land) cited p. 18, 33.

G.

Goodwin vs. Colorado Mortgage & Investment Company, 110 U. S. 1, 28 L. Ed. 47 (Declaration of Homestead must be Filed) cited p. 19, 27.

Gillespie vs. Fulton Oil and Gas Co., 236 Ill. 188, 86 N. E. 219, (Homestead is Estate), cited p. 18, 34.

H.

Hewitt, in re 244 Fed. 245 (Cannot claim homestead after filing Petition) cited p. 13, 19, 39.

Hirsch vs. Prescott, 89 Fed. 52, (Homestead is vested Estate) cited p. 18, 33.

iv.

L
Idaho Compiled Statutes, 1919, Section 5437, quoted in full p. 7.

Idaho Compiled Statutes, 1919, Section 5441, quoted in full, p. 8. cited p. 17, 22.

Idaho Compiled Statutes, 1919, Section 5462, quoted in full, p. 8, cited p. 17, 22.

Idaho Compiled Statutes, 1919, Section 5463, quoted in full p. 8, cited p. 17, 22.

Idaho Compiled Statutes, 1919, Section 5464, quoted in full p. 8, cited p. 17, 22.

Idaho Compiled Statutes, 1919, Section 5465, quoted in full p. 8, cited p. 17, 22.

K.
Kettenbach vs. Walker, 32 Idaho 54, 186 Pac. 912, (Filing petition creates lien equan in rank to attachment) cited p. 10, 19, 30.

I.
Law vs. Spence, 5 Idaho 244, 48 Pac. 282, (Lien cannot be divested by subsequent Declaration of Homestead) cited p. 17, 26, 27.

Lehfeldt, in re, 225 Fed. 681, cited p. 13, 14, 18, 31.

Lubbock vs. McMann, 82 California 226, 22 Pac. 1145 (Homestead is vested Estate) cited p. 18, 31.

N.
Nye, in re, 133 Fed. 33 (Cannot claim homestead after filing Petition) cited p. 11, 19, 36.

P.
Peyton vs. Farmers National Bank of Hillsboro, 261 Fed. 326 (Cannot initiate homestead after filing petition) cited p. 12, 19, 39.

Phillips, in re, 209 Fed. 490, cited p. 19, 41.

V.

R.

Ryan vs. Rogers, 14 Idaho 319, 94 Pac. 427 (Filing petition in bankruptcy equal to attachment) cited p. 10, 18, 29.

S.

Smith vs. Richards, 2 Idaho 498, 21 Pac. 419 (Prior valid lien is paramount) cited p. 17, 23, 24, 25, 44.

W.

Whitworth vs. McKee, 32 Washington 83, 72 Pac. 1046 (Homestead is vested estate) cited p. 18, 31.

Wright vs. Westheimer, 3 Idaho 232, 28, Pac. 430 (Declaration of Homestead must be filed) cited p. 17, 25.

	Page
Motion for Writ of Certiorari	3
Notice of Motion for Writ of Certiorari	2
Order for Appearance by Counsel	1
Proof of Service	48
Request for Submission by Clerk	46
Notice of Request for Submission	47

Bankruptcy equal to attachment) cited p. 18, 19, 20.

is paragoned) cited p. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

is vested estate) cited p. 18, 19, 20.

Notice of Homestead (and) cited p. 18, 19, 20.

Notice of Motion for Writ of Certiorari

Order for Appearance by Counsel

Request for Submission by Clerk

Notice of Request for Submission

Notice of Request for Submission

Notice of Request for Submission

No.

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of PETE STUMP, Bankrupt,
SAMUEL D. WHITE, Trustee,

Petitioner,

vs.

VETA STUMP,

Respondent.

ORDER FOR APPEARANCE

The Clerk will enter my appearance as Counsel for the
Petitioner.

JAMES E. BABB,

Residence and P. O. address,
Lewiston National Bank Build-
ing, Lewiston, Idaho.

No.

IN THE SUPREME COURT OF THE UNITED STATES

**In the Matter of PETE STUMP, Bankrupt,
SAMUEL D. WHITE, Trustee,**

Petitioner,

vs.

VETA STUMP,

Respondent.

**NOTICE OF APPLICATION FOR WRIT OF
CERTIORARI.**

TO VETA STUMP AND PETE STUMP, the above named respondents, and to HARVE H. PHIPPS, of Spokane, Washington, attorney for said respondents:

You and each of you are hereby notified that the petitioner will on Monday, the 22nd day of January, 1923, upon his verified petition and a certified copy of the entire record in cause numbered 3904, between the above named parties in the Circuit Court of Appeals of the Ninth Circuit, at the opening of the above entitled court on that day, or as soon thereafter as counsel can or may be heard, submit a motion (a copy of which, and of the petition for writ of Certiorari and brief in support thereof, are herewith respectfully delivered and served upon you) to the Supreme Court of the United States, in its Court Room at the Capitol, in the City of Washington, D. C.

**SAMUEL O. TANNAHILL,
ROBERT D. LEEPER,
JAMES E. BABB,**

**Attorneys and of Counsel for
Petitioner.**

**JAMES E. BABB,
Of Counsel for Petitioner.**

No.

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of **PETE STUMP**, Bankrupt,
SAMUEL D. WHITE, Trustee,

Petitioner,

vs.

VETA STUMP,

Respondent.

**MOTION FOR WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT**

Now comes Samuel D. White, as petitioner, and moves this honorable court that it shall by a certiorari or other proper process directed to the judges of the United States Court of Appeals for the Ninth Circuit, require and command said court to certify to this honorable court for its review and its determination a certain cause in said United States Circuit Court of Appeals for the Ninth Circuit, lately pending, numbered therein 3904, and entitled, In the Matter of Pete Stump, Bankrupt, Samuel D. White, Trustee, Petitioner, vs. Veta Stump, Respondent; and to that end tenders his petition and brief, together with a certified copy of the entire record of the said Circuit Court of Appeals.

SAMUEL O. TANNAHILL,

ROBERT D. LEEPER,

JAMES E. BABB,

Attorneys and of Counsel for
Petitioner.

JAMES E. BABB,

Of Counsel for Petitioner.

No.

IN THE SUPREME COURT OF THE UNITED STATES

**In the Matter of PETE STUMP, Bankrupt,
SAMUEL D. WHITE, Trustee,**
Petitioner,

VS.

VETA STUMP,

Respondent.

PETITION FOR WRIT OF CERTIORARI, TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, REQUIRING IT TO CERTIFY TO THE SUPREME COURT OF THE UNITED STATES, FOR ITS REVISION AND DETERMINATION, THE PETITION FOR REVIEW IN BANKRUPTCY TAKEN BY SAID SAMUEL D. WHITE, TRUSTEE IN BANKRUPTCY OF PETE STUMP, IN THE MATTER OF VETA STUMP VS. SAMUEL D. WHITE, TRUSTEE.

SAMUEL O. TANNAHILL,

ROBERT D. LEEPER

**Empire National Bank Building,
Lewiston, Idaho, Attorneys for
Petitioner.**

JAMES E. BABB,

**Lewiston National Bank Building,
Lewiston, Idaho, of Counsel
for Petitioner.**

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Samuel D. White, Trustee in Bankruptcy of Pete Stump, Bankrupt, filed under the provisions of Section 25d of the Bankruptcy Act of 1898, respectfully presents to this honorable court for solution the following novel, grave and important question, involving a uniform construction of the Bankruptcy Act of the United States, that is to say:

CAN A BANKRUPT OR HIS WIFE CLAIM A STATUTORY HOMESTEAD EXEMPTION UNDER THE LAWS OF THE STATE OF IDAHO, WHEN NEITHER HAS EXECUTED OR RECORDED A WRITTEN AND ACKNOWLEDGED DECLARATION OF HOMESTEAD AS REQUIRED BY LAW UNTIL AFTER THE PETITION IN BANKRUPTCY HAS BEEN FILED?

And to that end shows as follows:

FIRST: That Pete Stump and Veta Stump were, at all times in this petition mentioned, and are now, husband and wife, and citizens and residents of the County of Nez Perce, and State of Idaho.

SECOND: That the said Pete Stump and Veta Stump were, prior to the second day of February, 1922, the owners of, and resided upon that certain real property situated in the County of Nez Perce, and State of Idaho, and more particularly described as follows, to-wit: The Northeast Quarter (NE 1-4) of Section Thirty-one (31), Township Thirty-eight (38), North, of Range One (1) W. B. M., containing one hundred sixty (160) acres. That title to the said property stands

upon the records in the name of Pete Stump, subject to a mortgage of \$5,500.00 in favor of the Vermont Loan & Trust Co.

THIRD: That on the 2nd day of February, 1922, the said Pete Stump filed in the District Court of the United States for the District of Idaho, Central Division, his petition in bankruptcy, which is set forth in full at pages 6 to 26 inclusive of the transcript. That in his said petition, the said Pete Stump did not claim the above described land as a homestead exemption. That as shown by the schedules of said petition, the principal creditor interested in this proceeding is the Farmers Bank, erroneously listed in the schedules as the Vollmer-Clearwater Company, to which bankrupt is indebted to the amount of about \$4,000.00. Thereafter, Veta Stump, the wife of Pete Stump, on the 1st day of March, 1922, made and acknowledged a declaration, selecting and claiming the above described realty as a homestead for the joint benefit of herself, her husband and their three minor children. This declaration was filed and recorded in the County Recorder's Office on March 29th, 1922. At the adjourned first meeting of creditors on April 8th, 1922, the said Veta Stump, through her attorney, submitted to the referee in bankruptcy, Honorable Charles H. Chance, of Lewiston, Idaho, her claim in writing, praying that the homestead be set apart to her out of the assets of the estate. The trustee, Samuel D. White, resisted the application, and the proper pleadings having been formulated, the issue was tried by the referee, who made an order disallowing the claim of homestead except subject to the claim of general creditors.

FOURTH: That thereupon, a review of the said order of the referee was taken to the Honorable F. S. Dietrich, Judge of the District Court of the District of Idaho, who reversed the decision of the referee and ordered that he take further proceedings not out of harmony with his decision therein rendered. Judge Dietrich's memorandum order is found at pages 51 to 55 of the Transcript.

FIFTH: That thereupon the trustee applied for a review of the decision of the District Court to the Circuit Court of Appeals of the Ninth Circuit, and upon such review, the said Circuit Court of Appeals sustained the decision of Judge Dietrich and ordered that the homestead be allowed as a paramount claim against the estate of Pete Stump. The decision of the said Circuit Court of Appeals is found at pages 65 to 73 of the Transcript.

SIXTH: The Statutes of Idaho in regard to a homestead exemption which are pertinent to this inquiry are as follows:

"The word homestead as used in this title includes within its meaning:

The dwelling house in which the claimant resides, and the land on which the same is situated and located as in this title provided; also the proceeds thereof in the event of a voluntary sale, and also the insurance thereon, if any, in the event of a loss."

Section 5437, Idaho Compiled Statutes, 1919.

"The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises; or in an action in which an attachment was levied upon the premises before the filing of such declaration.

2. On debts secured by mechanic, laborer or vendor's liens upon the premises.

3. On debts secured by mortgages upon the premises, executed and acknowledged by the husband and wife or by an unmarried claimant.

4. On debts secured by mortgages upon the premises, executed and recorded before the declaration of homestead was filed for record."

Section 5441, Idaho Compiled Statutes, 1919.

"In order to select a homestead the husband or other head of a family, or in case the husband has not made such selection, the wife, must execute and acknowledge, in the same manner as a conveyance of real property is acknowledged, a declaration of homestead, and file the same for record."

Section 5462, Idaho Compiled Statutes, 1919.

"The declaration must be recorded in the office of the recorder of the county in which the land is situated."

Section 5464, Idaho Compiled Statutes, 1919.

"From and after the time the declaration is filed for record the premises therein described constitute a homestead"

Section 5465 Idaho Compiled Statutes 1919.

Provisions of the Bankruptcy Act which are pertinent are as follows:

"Sec. 6.—Exemptions of Bankrupt. a. This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in the state wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

Sec. 7. The bankrupt shall . . . (8) prepare, make oath to and file in court . . . a claim for such exemptions as he may be entitled to."

Section 47a. . . .
 "And such trustees, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable pro-

ceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied." Section 70a.

"The trustee of the estate of a bankrupt . . . shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all . . . (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."

It has been decided by this honorable court in the case of *Aeme Harvester Company vs. Beekman Lumber Company*, 222 U. S. 300, 56 L. Ed. 213, as follows:

"The filing of the petition is a caveat to all the world, and, in effect, an attachment and an injunction . . . The exclusive jurisdiction of the bankruptcy court is so far in rem that the estate is regarded as in custodia legis from the filing of the petition."

This honorable court has also decided in the case of *Bailey vs. The Baker Ice Machine Company*, 239 U. S. 268, 60 L. Ed. 275, as follows:

"When not otherwise specially provided, the rights, remedies, and powers of the trustee are determined with reference to the conditions existing when the petition is filed. It is then that the bankruptcy proceedings are initiated, that the hands of the bankrupt and of his creditors are stayed and that his estate passes actually or potentially into the control of the bankruptcy court. We have said: 'The filing of the petition is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and a distribution of his estate. The exclusive jurisdiction of the bankruptcy court is so far in rem that the estate is regarded

as in custodia legis from the filing of the petition.' *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U. S. 300, 307, 56 L. Ed. 208, 213, 32 Sup. Ct. Rep. 96. And again: 'We think that the purpose of the law was to fix the line of cleavage with reference to the condition of the bankrupt estate as of the time at which the petition was filed, and that the property which vests in the trustee at the time of adjudication is that which the bankrupt owned at the time of the filing of the petition.' "

The Supreme Court of the State of Idaho in the case of *Ryan vs. Rogers*, 14 Idaho 309 has held as follows:

"In such case, 'the filing of a petition in bankruptcy, followed by an adjudication, is a seizure of the property by the law which is equal in rank to seizure on attachment or execution, and with respect to the right to attack transfers or encumbrances by the bankrupt as either actually or constructively fraudulent the trustee stands in the same position as an attachment or execution creditor.' "

And the said Supreme Court of the State of Idaho has reaffirmed that rule in the case of *Kettenbach vs. Walker* 32 Idaho 544.

It is the position of this applicant that, under the bankruptcy statute and the construction placed thereon by this honorable court, and by the Supreme Court of the State of Idaho, the line of cleavage for all matters affecting the bankrupt estate is the date of the filing of the petition, that the filing of such petition is in effect the same as an attachment under the State Law, and that the property is in custodia legis from the date of the filing of the petition; that the trustee acquires the status of a creditor having a judgment or attachment lien as of the time when the petition in bankruptcy is filed; and that if a declaration of homestead is not prop-

erly executed and recorded by either the bankrupt or his wife prior to the filing of his petition in bankruptcy, the title of the trustee vested as of the date of the filing of the petition. It is the further contention of this applicant that no subsequent act either of the bankrupt or his wife could divest the title of the trustee or the creditors whom he represents. In as much as this honorable court has decided that the filing of a petition is in effect an attachment, and the Supreme Court of the State of Idaho has held that the filing of such a petition gives a lien equal in rank to that of an attachment, the lien of this trustee is of necessity superior to that of the homestead claim.

The exemptions to which a bankrupt is entitled are fixed and defined by the laws of the state in which he has his domicile. At the time of the filing of this petition, the real property above described was not exempt, and is therefore liable to the claims of the creditors of the bankrupt by virtue of the lien secured by the trustee, which dates as of the filing of the petition. A homestead right is a vested interest in land, not a mere exemption, which cannot be created subsequently to the attaching of the trustee's lien.

SEVENTH: That a decision by this honorable court is necessary in this action to promulgate a uniform construction of the bankruptcy act in this, to-wit:

That this identical question has been decided in different and contradictory manners in different circuits of the United States Circuit Court of Appeals, that is to say;

In the Circuit Court of the United States for the Eighth Circuit, it has been decided in the cases of *In re Nye*, 133 Fed-

eral 33; *In re Youngstrom*, 153 Fed. 98; and *Edgington vs. Taylor*, 270 Fed. 48; that, under facts identical with those in issue in this case, the lien of the trustee is superior to the lien of the homestead claimant.

"A homestead exemption under the bankruptcy act can be claimed only where given by the laws of the state, and in interpreting such laws the decisions of the highest courts of the state are controlling.

Under Rev. St. Colo. 1908, 2950, 2951, as construed by the Supreme Court of the state, to entitle the head of a family to a homestead exemption the word homestead must have been entered by either husband or wife on the margin of the record title to the property, and a bankrupt cannot claim property exempt as a homestead unless such entry was made prior to the filing of the petition in bankruptcy, as of which time title to the property vests in the trustee."

Edgington vs. Taylor—Supra.

The Circuit Court of Appeals for the Fifth Circuit, has decided as follows:

"No preparatory steps to occupy the purchased premises were taken by him before bankruptcy. The attitude of the case is therefore that of one claiming a homestead without occupancy or tangible possession to that end, and without having declared his intention to occupy the premises as a home. The authorities are against the sufficiency of such a showing for homestead exemption."

Peyton vs. Farmers National Bank of Hillsboro
(Tex.) 261 Federal 326.

The United States District Court for the District of Ohio, Eastern Division, speaking by Judge Westenhaver, has decided as follows:

"The Bankruptcy Act does not create any personal or homestead exemptions in favor of the bankrupt. It merely preserves to the bankrupt the full benefit of such exemptions as at the time of the adjudication he is entitled

to under the state law. Bankruptcy Act pars. 6, 7a, 8, 47a (11), 70a; Holden vs. Stratton, 198 U. S. 202, 25 Sup. Ct. 656, 49 L. Ed. 1018. The determination, therefore, of this question depends on the state of the Ohio law respecting homestead exemptions."

In re Hewitt 244 Fed. 245.

In the Circuit Court of the United States for the Ninth Circuit, in the case of Brandt vs. Mayhew, 218 Federal 422, and in the instant case, the holding has been exactly to the contrary, the court holding that under Section 6 of the Bankruptcy Act the court had the right to allow a claim of homestead made subsequently to the filing of the petition in bankruptcy.

"This court has in Brandt vs. Mayhew, 218 Fed. 422, declared that the purpose of the amendment to section 47a, which is now comprised by clause 2 of such section, was to make effective the rights of creditors against those who claimed secret or unrecorded liens or adverse interests in the property of the bankrupt; and that it did not affect the provisions of section 6 of the act, which guarantees to the bankrupt the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in bankruptcy."

In re Stump (this case) Transcript, page 69.

That this conflict is causing grave trouble is apparent from the opinion of United States District Judge Bourquin in the case of In re Lehfeldt, (Montant), 225 Federal 681, where it is said:

"In principle the case is indistinguishable from In re Mayhew 218 Federal 422, 134 C. C. A. 210 to which, as the decision of a superior tribunal, it is the duty of this court to conform. But it is believed that the dissenting opinion in the Mayhew case, quoting from In re Youngstrom 153 Federal 98, 82 C. C. A. 232, is the better doctrine; and

diversity of opinion in respect to the question may justify brief reasons for this belief

There is nothing in the Bankruptcy Act providing for divestiture of the trustee's title by subsequently created exemptions or at all, save in the instances of composition and of dower and allowances fixed by state law for widows and children of decedents, in case of the bankrupt's death. If the exemption does not exist when the bankruptcy petition is filed, title to the property vests in the trustee for the benefit of creditors, and its status then controls its disposition throughout save as last aforesaid.

But to conform to the Mayhew case, as in duty bound the order of the referee is affirmed."

And so it is that your petitioner contends that by reason of the decision in the case at bar, and others herein cited, there is a contrariety of opinion, and not a uniform administration of the Bankruptcy Act (as necessary as uniformity in the Act itself, required by Section 8, Subsection 4, Article 1, of the Constitution of the U. S. as to this grave and important question.

EIGHTH: That in the opinion of your petitioner the decision of the Circuit Court of Appeals of the Ninth Circuit upon this matter was and is manifestly erroneous, by reason of all of the matters hereinbefore set forth, and should be revised by this honorable court in matter of law.

Your petitioner hereto appends his brief in support of this petition.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said court to certify and send

to this court a full and complete transcript of the record in all proceedings in said Circuit Court of Appeals in the case there in entitled; "In the Matter of the Estate of Pete Stump, Bankrupt; Samuel D. White, as Trustee of the Estate of Pete Stump, Bankrupt, Petitioner vs. Veta Stump, Respondent, No. 3904" to the end that said case may be reviewed and determined by this court, as provided by law; and that the judgment of the said Circuit Court of Appeals may be modified so as to sustain the petition for review filed by said Samuel D. White, Trustee, in that Court in Bankruptcy.

And your petitioner will ever pray.

SAMUEL D. WHITE,

Trustee of the Estate of Pete
Stump, Bankrupt; Petitioner.

SAMUEL O. TANNAHILL,

ROBERT D. LEEPER,

JAMES E. BABB,

Attorneys for Petitioner.

JAMES E. BABB,

Of Counsel for Petitioner.

STATE OF IDAHO,)
) ss.
 County of Nez Perce)

Samuel D. White, being first duly sworn upon his oath, deposes and says: That he is the Trustee of the Estate of Pete Stump, bankrupt, and the petitioner named in the foregoing petition; that he has read all of the foregoing petition, and that the allegations there of are true to deponent's knowledge, information and belief; and as to all matters within his knowledge he believes it to be true and as to all matters upon information and belief and advice of counsel says that said petition states the true facts as he has been informed and advised and therefore believes.

SAMUEL D. WHITE,

Subscribed to before me this 23rd day of December, 1922.

SAMUEL O. TANNAHILL,

Notary Public in and for said
 State, residing at Lewiston,
 therein.

(Seal)

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

POINTS AND AUTHORITIES

I

At the date of the filing of the petition this property was non exempt, and was subject to transfer, levy and execution.

Idaho Compiled Statutes of 1919—Secs. 5441 quoted in full p. 8, 5462, quoted in full p. 8, 5463, quoted in full p. 8, 5464, quoted in full p. 8, 5465, quoted in full p. 8.

See Cases cited under Point 2 below.

Argument pp. 22 to 23:

II

A legally acquired lien or a legal investiture of title cannot be defeated by any subsequent act of the debtor or his wife.

Smith vs. Richards, 2 Idaho 498, 21 Pac. 419, cited p. 23-24-25, 44.

Wright vs. Westheimer, 3 Idaho 232, 28 Pac. 430, cited p. 25.

Burbank vs. Kirby, 6 Idaho 210, On rehearing 213, 55 Pac. 285, cited p 25-26.

Law vs. Spence, 5 Ida. 244, 48 Pac. 282, cited p. 26-27.

Goodwin vs. Colorado Mortgage & Investment Company, 110 U. S. 1, 28 L. Ed. 47, cited p. 27.

Argument pp 23 to 27.

III.

The filing of a petition in bankruptcy is in effect an at-

tachment, and a caveat, dating from the date of filing the petition.

Acme Harvester Company vs Beekman Lumber Co.,
222 U. S. 300, 56 L. Ed. 213, cited p. 27-28.

Bailey vs. Baker Ice Machine Company, 239 U. S.
268; 60 L. Ed. 275, cited p. 28.

Ryan vs. Rogers, 14 Idaho 309, 94 Pac. 427, cited p. 29.

Kettenbach vs. Walker, 32 Idaho 544, 186 Pac. 912,
cited p. 30.

In re Lehfeldt, 225 Fed. 681, cited p. 31.

Argument pp. 27 to 31.

IV.

The homestead right constitutes an estate in land obtained by the making and filing of a proper declaration. It is beyond a mere statutory exemption, and its allowance creates a new estate.

Barber vs. Babel, 36 California 11, cited p. 32-33.

Lubbock vs. McMann, 82 California 226, 22 Pac. 1145,
cited p. 31.

Hirsch vs. Prescott, 89 Fed. 82, cited p. 33.

Whitworth vs. McKee, 32 Washington 83, 72 Pac.
1046, cited p. 31.

Fritts vs. Fritts, 298 Ill. 314; 131 N. E. 584, cited p. 33.

Gillespie vs. Fulton Oil and Gas Co., 236 Illinois 188,
86 N. E. 219, cited p. 34.

Argument pp. 31 to 34.

V.

After the rights of the trustee had attached they could not be thereafter divested by the bankrupt court.

Comment on opinion of C. C. A. In re Stump (this case), Transcript 68-69, cited p. 34-35.

Section 6 of Bankruptcy Act, cited p. 35.

Sections 47a and 70a of the Bankruptcy Act, p. 35.

Acme Harvester Co. vs. Beekman Lumber Company,
222 U. S. 300, 56 L. Ed. 213, cited p. 36.

Bailey vs. Baker Ice Machine Company, 239 U. S.
268, 60 L. Ed. 275, cited p. 36.

In re Nye, 133 Fed. 33, cited p. 36.

In re Youngstrom, 153 Fed. 103, cited p. 37-38.

Edgington vs. Taylor, 270 Fed. 48, cited p. 38-39.

Goodwin vs. Colorado Mortgage Investment Com-
pany, 110 U. S. 1, 28 L. Ed. 47, cited p. 37.

Peyton vs. Farmers National Bank of Hillsboro, 261
Fed. 326, cited p. 39.

In re Hewitt, 244 Fed. 245, cited p. 39.

In re Lehfeldt, 225 Fed. 681, cited p. 39.

Argument pp. 34 to 39.

VI.

By the filing of the petition, creditors are deprived of their remedy under state laws, and the bankrupt and his wife are estopped to assert an after acquired or created title.

Acme Harvester Company vs. Beekman Lumber Co.
222 U. S. 300; 56 L. Ed. 213, cited p. 39.

Bailey vs. Baker Ice Machine Company, 239 U. S.
268; 60 L. Ed. 275, cited p. 39.

In re Boyd, 120 Fed. 999, cited p. 40-41.

In re Phillips, 209 Fed. 490, cited p. 41.

Argument pp. 39 to 41.

VII

The construction placed by the C. C. A., 9th Circuit upon the relationship of Section 6 of the Act to Section 47a and 70a is erroneous, and imparts ambiguity to a perfectly clear statute. The line of cleavage for all purposes is the date of filing the petition.

Sections 6, 47a and 70a of Bankruptcy Act, cited p. 42.

Acme Harvester Company vs. Beekman Lumber Co.
222 U. S. 300; 56 L. Ed. 213, cited p. 43.

Bailey vs. Baker Ice Machine Company, 239 U. S.
268; 60 L. Ed. 275, cited p. 43.

Everett vs. Judson, 228 U. S. 473-57 L. Ed. 927,
cited p. 43.

Argument pp. 41 to 44.

ASSIGNMENT OF ERROR.

Your petition assigns as error the entering of judgment by the Circuit Court of Appeals of the Ninth Circuit in the instant case, wherein the decision of the District Court of the United States for the District of Idaho was sustained, such judgment being found at pages 73-74 of the Transcript.

ARGUMENT.

The question to be decided in this case is clear cut, and it involves the determination of the relationship of Sections 47a and 70a of the Bankruptcy Act to Sections 6 and 7 (8) thereof. (Quoted in petition p. 7.) As set forth in Section 6 of the petition one line of decisions, particularly in the Eighth Circuit, holds that under 47a the trustee takes the estate as of the date of filing the petition, and if no proper declaration of homestead was on record at that time, the homestead cannot be afterwards claimed. The ninth Circuit has held in the instant case that 47a is subservient to Section 6 of the Act, and that a bankrupt or his wife can claim a homestead after filing the petition by complying with state laws. We believe that the rule as promulgated in the Eighth Circuit is supported by the better reasoning, and in support thereof urge the following:

POINT I.

At the date of the filing of the petition, this property was not exempt.

The decision of this case hinges entirely upon the construction to be placed upon Sections 5441, 5462, 5463, 5464 and 5465 of the Compiled Statutes of Idaho, taken in connection with the provisions of the Bankruptcy Act.

5462 provides that in order to claim a homestead, the husband or wife

“must execute and acknowledge, in the same manner as a conveyance of real property, a declaration of homestead, and file the same for record.”

5464 provides that

"The declaration must be recorded in the office of the recorder of the county in which the land is situated."

5441 provides that

"The homestead is subject to execution or forced sale in satisfaction of judgments obtained before the declaration of homestead was filed for record, and which constitute liens upon the premises; or in an action in which an attachment was levied upon the premises before the filing of such declaration."

And 5465 provides,

"From and after the time the declaration is filed for record the premises therein described constitute a homestead."

Therefore it cannot be disputed that at the date of the filing of Stump's petition in bankruptcy, this property was not exempt and was subject to levy and execution. Neither the bankrupt nor his wife had a homestead right therein, actual, constructive or otherwise, until a proper declaration was executed and recorded. This was not done prior to the filing of the petition.

POINT 2.

A legally acquired lien cannot be divested by any subsequent act of bankrupt or his wife.

The right to attach real property in this state upon which no declaration of homestead has been filed is an integral part of all contracts, and is a rule of property of this state. It has been decided by the Supreme Court of Idaho, in construing 5441, that no subsequent act of the debtor or his wife could divest a legally acquired lien.

"The question presented for our consideration is, can the defendant, or his wife, under the circumstances, by filing a declaration of homestead subsequent to the attaching of a judgment lien, divest that lien, and prevent

the property being made subject to it. It is with some difficulty that we have been able to arrive at a satisfactory conclusion in this case. Such doubts have arisen mainly from a consideration of the decisions of the courts of Nevada and California. These cases appear to hold that the homestead itself is exempt from forced sale under execution, and that a subsequent filing of a declaration of homestead under the statute defeats the operation and effect of the lien. Although we are of the opinion that these cases do not go fully to that extent, yet, even if they do, we are not prepared to uphold the doctrine laid down therein. Freeman in his work on Executions, Sections 249, 249d, 249e, says, referring to the cases which we have mentioned: 'These provisions clearly make it the duty of the officer to levy the writ on all property not then exempt from execution, and afterward, in the event of plaintiff's recovering judgment, to sell all the property attached, if necessary to produce a satisfaction of such judgment. We think, therefore, that, construing all the statutes together, it clearly appears that these decisions are wrong, and that, when an attachment is properly levied on lands not then exempt from attachment and execution, a lien is created which no subsequently arising exemption can supplant; and in so thinking we are sustained by a decided preponderance of the adjudications upon this subject.' Thompson on Homesteads and Exemptions, Section 317, says: 'If a simple contract debt, created at a time when the creditor has not had the notice required by law—whether given by visible occupancy or a declaration of record—that the debtor has withdrawn a certain portion of his land from exemption by making it his homestead, will bind such homestead, a fortiori a valid lien placed upon land before it acquires the character of homestead will not be subsequently impaired by the debtor occupying such land as his homestead, or, in those states where such a proceeding is required, by filing the statutory declaration of homestead. If the legislature of a state cannot divest such a lien, it is pretty clear that a private individual can

do no act which would have this effect. Plain as this conclusion would seem to be, the question has been thrust in the face of the courts again and again.' Smyth on Homestead and Exemption, section 35, says, 'that, if the premises became a homestead after a lien has attached, this does not discharge or affect the lien;' and a 'lien claimant, having a lien older than the homestead right, may enforce his lien without any reference 'to such homestead right.' Platt on Property Rights of Married Women, Section 7 says: 'All liens acquired before the homestead has been established must be raised, or it will be subject to forced sale for their satisfaction.' And again, in the same section, he says: 'Consequently an appropriation of land as a homestead subsequent to the levy of an attachment or the attaching of a judgment lien cannot protect it from forced sale under the lien thus acquired.' "

Smith vs. Richards, 2 Idaho, 498,-21 Pac. 419.

Community property is subject to attachment and execution for the debts either of the community or of the husband separately.

Holt vs. Empey 32 Idaho 106-178 Pac. 703.

"The required homestead declaration must be filed in order to secure the benefit of the exemption laws."

Wright vs. Westheimer 3 Idaho 232-28 Pac. 430.

"It is the act of the owner of the property, whereby such owner secures a right or privilege given him by the statute, and which is a derogation of the common law and common right, and which can only be secured by a substantial compliance with the provisions of the statute, conditions precedent to the investiture of the property with the exceptional character contemplated. If the title to the property passes from the owner by due and proper proceedings in the course of law, he cannot, after such title has vested in another, defeat it by establishing a homestead nunc pro tunc."

OPINION ON RE HEARING

"The proceeding to exempt the homestead is a statutory one. To exempt the home from the lien of attachment, judgment, or execution, a declaration, containing the matters required by law, acknowledged as required by law, and the acknowledgement certified as required by law, must be filed in the county recorder's office in the county where the homestead is situated."

Burbank v. Kirby, 6 Idaho 210, 213, 215. 55 Pac. 295.

"There is one fact in this case which seems to have been overlooked by counsel for the respondents as well as by the trial court, and that is that at the time of the execution and delivery of the mortgage upon real estate in this case such real estate was not a homestead. The statutes of Idaho provide the only means by which real estate can be impressed with the character of a homestead. (Idaho Rev. Stats., secs. 3070-3088). No attempt to comply with these provisions by the defendants, or either of them, was made until after this action was commenced. Section 3039 of the Revised Statutes of Idaho, among other claims or debts for which the homestead is liable, says (subdivision 4): 'On debts secured by mortgages upon the premises executed and recorded before the declaration of homestead was filed for record.' It follows that until after the action was commenced in this case the real estate in question was like any other community property, and subject to the same conditions. Section 2505 of the Revised Statutes, provides: 'The husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate estate; but such power of disposition does not extend to the homestead or that part of the common property occupied or used by the husband and wife as a residence.'" Section 2494 of the Revised Statutes, is as follows: 'The husband is the head of the family. He may choose any reasonable place or mode of living; and the wife must conform thereto.' It follows that the property in question at the time the mortgage thereon was executed was

common property of the marital community."

Law vs. Spence, 5 Idaho 244-251. 48 Pac. 282.

This honorable court has so decided:

"A person is not entitled to the benefits of the homestead law in Colorado, unless the word 'homestead' be entered on the margin of the record title of the premises occupied by him as a homestead; actual notice to the creditors of the occupancy of particular premises as a homestead is not equivalent to such entry on the record.

Goodwin vs. Colorado Mortgage and Investment Co.
110 U. S. 1 - 28 L. Ed. 47.

POINT 3.

The filing of a petition in Bankruptcy is in effect an attachment and a caveat, dating from the date of filing the petition.

There can be no dissent from this proposition as it has been decided both by the Supreme Court of the United States and by the Supreme Court of Idaho.

"Whatever may be the limitations of the doctrine declared by this court, speaking by the late Chief Justice Fuller in *Mueller v. Nugent*, 184 U. S. 1-14; 46 L. Ed. 405, 411, 22 Sup. Ct. Rep. 269, where it is said: 'It is as true of the present law (1898, 30 Stat. at L. 544, Chap. 541, U. S. Comp. Stat. 1901, p. 3418) as it was of that of 1867 (14 Stat. at L. 517, Chap. 176), that the filing of the petition is a caveat to all the world, and, in effect, an attachment and injunction. *International Bank v. Sherman*, 101 U. S. 403, 25 L. Ed. 866.

The filing of the petition is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. The exclusive jurisdiction of the bankruptcy court is so far in rem that the estate is regarded as in custodia legis from the filing of the petition.

Pending the proceedings the law holds the property to abide the decision of the court upon the question of

adjudication as effectively as if an attachment had been issued, and prevents creditors from defeating the purpose of the law by bringing separate attachment suits, which would virtually amount to preferences in favor of such creditors. See in this connection the well-considered case of *State Bank v. Cox*, 74 C. C. A. 285, 143 Fed. 91."

Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300, 56 L. Ed. 213.

"But it is contended that sec. 47a, clause 2, of the Bankruptcy Act, as amended in 1910, Chap. 412, 36 Stat. at L. 838, 840, Comp. Stat. 1913, 9586, 9631, gave the trustee the status of a creditor having such a lien. That section provides that a trustee in bankruptcy, 'as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings.' Although otherwise explicit, this provision does not designate the time as of which the trustee is to be regarded as having acquired the status indicated, and yet some point of time must be intended. Is it the date of the trustee's appointment, the filing of the petition in bankruptcy, or some time anterior to both? When not otherwise specially provided, the rights, remedies, and powers of the trustee are determined with reference to the conditions existing when the petition is filed. It is then that the bankruptcy proceeding is initiated, that the hands of the bankrupt and of his creditors are stayed and that his estate passes actually or potentially into the control of the bankruptcy court. We have said: 'The filing of the petition of an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. The exclusive jurisdiction of the bankruptcy court is so far in rem that the estate is regarded as in custodia legis from the filing of the petition.' *Acme Harvester Co. v. Beekman Lumber Co.* 222 U. S. 300, 307, 56 L. Ed. 208, 213, 32 Sup. Ct. Rep. 96. And again: 'We think that the purpose of the law was to fix the line of cleavage with

reference to the condition of the bankrupt estate as of the time at which the petition was filed, and that the property which vests in the trustee at the time of adjudication is that which the bankrupt owned at the time of the filing of the petition.' *Everett v. Judson* 228 U. S. 474, 479, 57 L. Ed. 927, 929, 46 L. R. A. (N. S.) 154, 33 Sup. Ct. Rep. 568. And see *Zavelo v. Reeves*, 227 U. S. 625, 631, 57 L. Ed. 676, 678, 33 Sup. Ct. Rep. 365, Ann. Cas. 1914D, 664. Had it been intended that the trustee should take the status of a creditor holding a lien by legal or equitable process as of a time anterior to the initiation of the bankruptcy proceeding, it seems reasonable to believe that some expression of that intention would have been embodied in 47a as amended. As this was not done, we think the better view and one which accords with other provisions of the act, is that the trustee takes the status of such a creditor as of the time when the petition in bankruptcy is filed. Here the petition was filed almost two months after the contract was filed for record, and therefore the trustee was not entitled to assail it under the recording law of the state."

Bailey vs. Baker Ice Machine Co., 239 U. S. 268, 60 L. Ed. 275.

"In such case, 'the filing of a petition in bankruptcy, followed by an adjudication, is a seizure of the property by the law which is equal in rank to seizure on attachment or execution, and with respect to the right to attack transfers or encumbrances by the bankrupt as either actually or constructively fraudulent the trustee stands in the same position as an attachment or execution creditor.' (In re *Rogers* 125 Fed. 169, 60 C. C. A. 567; *Bankruptcy Act* Sec. 67)."

Ryan v. Rogers, 14 Idaho, p. 309-94 Pac. 427.

"Nor do the provisions of Sec. 47a, as amended of the national bankruptcy act, giving general creditors the status of creditors holding liens by legal or equitable process, militate against the rule, for the reason that, as stated by the Supreme Court of the United States, such status of the general creditors does not arise until the

to petition in bankruptcy is filed. (Bailey v. Baker Ice Machine Co., supra; Anderson v. Chenault, supra; 2 Remington on Bankruptcy, 2d Ed., p. 1124, Sec. 1270, to 3-10).¹²

Kettenbach v. Walker, 32 Idaho, 544, p. 550-186 Pac. 912.

This being the rule, it seems to us fundamental that the lien of the trustee attached to this land under the statute in exactly the same manner as if a creditor had attached in the state court. Both the Idaho Supreme Court and the United States Supreme Court hold that the filing of the petition is in effect a caveat or an attachment, and the consequence must abide the words. The effect of a legal lien imposed upon the land by attachment or otherwise prior to declaration of homestead, is, in Idaho, to defeat the homestead right. Therefore, this being the effect, the filing of the petition in voluntary bankruptcy prior to a declaration of homestead must, in so far as creditors are concerned, defeat a later claim for homestead. This particularly in view of Sec. 47a and 70a of the Bankruptcy Act.

Clearly this real estate could have been levied upon and sold under judicial process at any time prior to the filing of the petition regardless of the rights of the wife therein. Just the minute that an attachment or other judicial levy was made upon these premises, under the statutes of the State of Idaho, the premises became absolutely subject to judicial sale under any judgment recovered therein. The filing of the petition was in effect an attachment and after the petition was filed no creditor could attach, as is set forth in the Beekman case, supra. By the filing of the petition the trustee acquired all of the rights of an attachment or execution creditor against

this property. Neither the bankrupt nor his wife by any act of theirs could divest the lien thereof. In re Lehfeldt, 225 Fed. 691. The Supreme Court of Idaho in the case of Smith vs. Richards, 2 Idaho 498, has held that the rights of spouses are subject to this judicial process and that they cannot afterwards claim any homestead right after the lien of such process has attached. This petitioner has no greater rights to the homestead than is given her by the statutes and decisions of Idaho and this court should follow those decisions. The lien of the creditors in this estate has attached and cannot be divested.

POINT 4

The homestead right constitutes an estate in land obtained by the making and filing of a proper declaration. It is beyond a mere statutory exemption, and its allowance creates a new estate.

"When the attributes of residence and selection according to law exist so as to express its essence, the homestead becomes an estate in the premises selected, exempted by law from forced sale."

Lubbock vs. McMann, 82 Cal. 226, 22 Pac. 1145-1147.

"But perhaps the better reason is that a homestead in this state is in the nature of a vested interest, or a species of estate which, when once acquired, is not destroyed by the mere repeal of the statute authorizing its acquisition, but can be relinquished only by the voluntary act of the person holding it. On whichever of these grounds, however, the rule may be said to rest, the rule itself has been so firmly embodied in our decisions as not to be now overthrown."

Whitworth vs. McKee, 32 Wash. 83, 72 Pac. 1046-1051.

"In the homestead estate most of the unities of the joint tenancy are found, for it is created by the same instrument and at the same time. The homestead right and the joint interests are created by the executing, acknowledging, and recording of the declaration. The new character of the state, with its new incidents, commences at that moment, and the new rights vest in both parties at the same time. So far as the homestead right is concerned they have one and the same interest accruing by one and the same conveyance, (or act), commencing at one and the same time, and held by one and the same undivided possession."

It is manifest from this, and the other provisions of the Act, that the Legislature intended that the husband and wife, to the extent of the homestead value, should hold a joint estate, or interest, in the land of some kind, which could not be reached by creditors, or in any way alienated, incumbered, or impaired by the act of either, without the consent of the other. The mode of accomplishing the object adopted is by filing a declaration of intention either by the husband and wife jointly, or by either alone, stating the prescribed facts in as solemn and formal manner as is adopted in the conveyance of real estate. It is made a public record and notice to all, like conveyances of real estate, so that none can be misled as to the character of the estate vested and held by the occupants or owners of homesteads by virtue of filing the declaration in pursuance of the statute. Whatever doubt there may be as to the power of the wife alone to devote the separate property of the husband, or the husband the separate property of the wife, to such an object, and by their own separate act vest the joint homestead interest without the assent of the other, we see no objection to either devoting his, or her, own separate property, or the common property to such object by an act thus formal.

Although the mode of creating the joint estate, or interest in the husband and wife, is not a conveyance in form from the one in whom the title stands upon the record, to the two, and although the former legal title

may be conceded to remain where it was before, yet the effect and operation of the act of recording the declaration made in due form, is to take from the separate property of the party owning and consenting—if the consent of the owner is required—or the common property of both, the property claimed as a homestead, and to vest in the two jointly an estate, or interest in the land, which interest, to the extent of the homestead value, cannot thereafter, while both live, be severed, alienated, incumbered, divested, destroyed, or impaired without the concurrent act of both parties, equally solemn and formal with that by which the new and different estate or interest was created."

Barber vs. Babel, 36 California 11, pages 16-18.

"A homestead is more than a mere right of occupancy exempt from levy and sale for debts."

Fritts v. Fritts, 298 Illinois 314, 131 N. E. 584.

"I think it would be quite unseemly in a federal court to do so. The legislature of Virginia, in giving to the head of a family power to waive the homestead, and in wholly omitting to provide that, or how, it shall, if personalty or money, be tied up in his hands, for the benefit of succeeding beneficiaries of the exemption, and finally of creditors, has seemed to have intentionally constituted it a fee in his hands, and to have left it subject to his will."

Hirsch vs. Prescott, 89 Fed. 52.

See also the following:

Jones v. De Graffenreid, 60 Ala. 145,

Johnson v. Turner, 29 Ark. 280,

Abbott v. Abbott, 97 Mass. 136,

Woodbury v. Luddy, 14 Allen 1, 92 Am. D. 731,

Kerley v. Kerley, 13 Allen 286,

Silloway v. Brown, 12 Allen 30,

Cross v. Weare, 62 N. H. 125,

Ketcham v. Ketcham, 269 Ill. 584, 109 NE 1025,

Snell v. Snell, 123 Ill. 403, 14 NE 684, 5 AmSR 526,

Fizette v. Fizette, 37 Ill. A. 536,

Board of Trustees v. Beale, 6 Ill. A. 536,

Swan v. Stevens, 88, Mass. 7,

Parks v. Reilly, 5 Allen (Mass.) 77.

Gillespie vs. Fulton Oil & Gas Co., 236 Illinois 188-86
N. E. 219.

Therefore, Section 6 of the Bankruptcy Act furnishes no proper basis upon which to defeat the manifest intention of Congress as expressed in 47a and 70a. **After the estate of homestead has been properly created, then that estate can be declared exempt under Section 6 if it existed at the time of filing the petition. But Section 6 cannot furnish the foundation for the creation of the estate, after a legal lien has attached and after title has passed to the trustee by operation of law. The question of a strict or liberal construction of the exemption statute is not in issue. The rule is fundamental.**

POINT 5

After the rights of the trustee had attached they could not be thereafter divested by the Bankrupt Court.

The Circuit Court of the Ninth Circuit, in its decision of the instant case, based its decision upon the premises that Section 6 and 7a of the Bankruptcy Act were paramount, in the following words:

"First, let it be premised that exemptions to which the bankrupt is entitled are fixed and defined by the laws of the state in which he has his domicile, but the time and manner of claiming, selecting and allowance of exemptions are matters wholly within the jurisdiction and control of the bankruptcy courts. Further, under section 7a, clause 8, the voluntary bankrupt is required to prepare and file with his petition for bankruptcy a schedule of his assets and liabilities which shall contain 'a claim for such exemptions as he may be entitled to.' These

claims may be amended if seasonably done. In *re Webb*, 219 Fed. 349, 350. Or if by oversight the claim for home-
stead is omitted from the schedule, it may be amended if
timely application therefor is made to the court. In *re*
Maxson, 170 Fed. 356.'

Now, as to the contention of counsel: This court has
in *Brandt v. Mayhew*, 218 Fed. 422, declared that the pur-
pose of the amendment to section 47a, which is now com-
prised by clause 2 of such section, was to make effective
the rights of creditors against those who claimed secret
or unrecorded liens or adverse interests in the property of
the bankrupt; and that it did not affect the provisions
of section 6 of the act, which guarantees to the bankrupt
the exemptions which are prescribed by the state laws
in force at the time of the filing of the petition in bank-
ruptcy."

In *re Stump* (this case) page 69 of Transcript.

Yet the court admits the following:

"It is no longer to be disputed that 'the exclusive
jurisdiction of the bankruptcy court is so far in rem that
the estate is regarded as in *custodia legis* from the filing
of the petition.' *Acme Harvester Co. v. Beekman Lum-
ber Co.*, 222 U. S. 300, 307. Or that under Section 47a,
clause 2 the trustee acquires the status of a creditor
having a lien as of the time when the petition in bank-
ruptcy is filed. *Bailey v. Baker Ice Machine Co.*, 239 U.
S. 268, 275, 276."

Page 68 of Transcript.

Section six of the Act, upon which the above decision is
based, reads as follows:

"Section 6. Exemptions of Bankrupt. a. This act
shall not affect the allowance to bankrupts of the exempt-
ions which are prescribed by the state laws in force at the
time of the filing of the petition in the state wherein they
have their domicile for the six months or the greater
portion thereof immediately preceding the filing of the
petition."

The homestead exemption in Idaho, as prescribed by the state law in force at the time of the filing of the petition, is allowed "from and after the time the declaration is filed for record."

No such declaration was on file at the time of the filing of the petition, and the property was not exempt. It therefore passed to the trustee under Section 47a and 70a of the Act, as decided in *Acme Harvester Company vs. Beekman Lumber Company* and *Bailey vs. Baker Ice Machine Company—Supra*.

After the lien of the trustee had vested, the property no longer belonged to the bankrupt. Under the state law no exemption existed at the time of such vestiture. The trustee could not have reported it as exempt under 7a, cited by the Circuit Court in this case.

Contrary rulings in other Federal Circuits, which we believe are supported by the better reasoning, held as follows:

"The provisions authorizing bankrupt courts to determine all claims of bankrupts to their exemptions, and directing trustees to set apart the bankrupts exemptions (Sections 2, 47, 30 Stat. 545, 557 U. S. Comp. St. 1901 pp. 3420, 3438), disclose no purpose to render the exemptions less beneficial than intended by state laws, but are in harmony with the purpose of the act, disclosed in other provisions, to make those laws the measure of the extent and nature of the exemptions, as well as of the right to them."

In re Nye, 133 Fed. 33.

"We conclude that a claimed exemption otherwise recognized by the state laws, but to which the bankrupt had not become entitled at the time of the filing of the petition or at the time he was adjudged a bankrupt, is not within the saving and protecting clauses of the Bankruptcy Act, and cannot be allowed or set apart thereunder.

Was the bankrupt or his family entitled to the homestead exemption here asserted at either of these times? The answer must be found in the state statutes before set forth and the decisions of the Supreme Court of the state interpreting them. Repeated decisions of that court are to the effect that the purpose of these statutes is to preserve the home for the family, and to that end, to protect it from alienation by one spouse without the concurrence of the other, and also from execution or attachment arising from any debt, contract, or civil obligation; that no one is entitled to the protection and benefits of these statutes until the premises are designated as a homestead upon the margin of the record title as prescribed in Section 2132, *supra*; and that this designation is effective only from time it is made, and has no retrospective operation. *Drake v. Root*, 2 Colo. 685; *Wells v. Caywood*, 3 Colo. 487; *Barnett v. Knight*, 7 Colo. 365, 3 Pac. 747; *Jones v. Olson*, 17 Colo. App. 144, 67 Pac. 349; *Goodwin v. Colorado Mortgage Investment Co.*, 110 U. S. 1, 5, 3 Sup. Ct. 473, 28 L. Ed. 47.

In the last case it was said by Mr. Justice Harlan: 'No one is entitled to the benefits of the foregoing statutory provisions unless the word 'homestead' be entered upon the margin of the recorded title of the premises occupied as a homestead. Such are the express words of the statute, and there is no room left for construction. We are not at liberty to say that the Legislature intended actual notice to creditors of the occupancy of particular premises as a homestead to be equivalent to the entry on the record of title the word 'homestead.' The requirement that the record of the title shall show that the premises are occupied as a homestead before any person can become entitled to the benefits of the statute is absolute and unconditional.'

The premises in controversy were not so designated until after the time of the filing of the petition and after the time when the owner was adjudged a bankrupt, so neither he nor his family was entitled to a homestead exemption therein at either of these times.

But under the Bankruptcy Act, when a debtor is adjudged a bankrupt, his entire estate, in so far as it is not exempt, is in legal contemplation as effectively brought into custodia legis and appropriated to the payment of his debts as if it were taken in execution or attachment, subject only to the qualification that, where the act does not specially provide otherwise, as it does in respect of cases affected by fraud, the estate is brought into custodia legis and appropriated in the same plight and condition in which the bankrupt himself held it, and subject to all the equities imposed upon it in his hands."

In re Youngstrom, 153 Fed. 103.

The court will note that this case is used as the basis of a strong dissenting opinion by Circuit Judge Erskine M. Ross in the Brandt vs. Mayhew case 218 Fed. 422, which is the precedent used in the decision of this case.

"A homestead exemption under the Bankruptcy Act can be claimed only where given by the laws of the state, and in interpreting such laws the decisions of the highest courts of the state are controlling.

Under Rev. St. Colo. 1908, 2950, 2951, as construed by the Supreme Court of the State, to entitle the head of a family to a homestead exemption the word homestead must have been entered by either husband or wife on the margin of the record title to the property, and a bankrupt cannot claim property exempt as a homestead unless such entry was made prior to the filing of the petition in bankruptcy, as of which time title to the property vests in the trustee."

"When the property in question was claimed as a homestead in the voluntary petition in bankruptcy, it was claimed under the provisions of section 2950, Rev. Sts. Colo. 1908. Counsel therefore must have known what the statute required when he drew the petition. Title to the land in question vested in the trustee as of the date of the filing of the voluntary petition in bankruptcy, Sections 47a and 70a, Bankruptcy Law."

Edgington vs. Taylor 270 Fed. 48, Dec. 20, 1920.

The Circuit Court of Appeals for the Fifth Circuit, has decided as follows:

"No preparatory steps to occupy the purchased premises were taken by him before bankruptcy. The attitude of the case is therefore that of one claiming a homestead without occupancy or tangible possession to that end, and without having declared his intention to occupy the premises as a home. The authorities are against the sufficiency of such a showing for homestead exemption."

Peyton vs. Farmers National Bank of Hillsboro
(Tex.) 261 Federal 326.

The United States District Court for the District of Ohio, Eastern Division, speaking by Judge Westenhaver, has decided as follows:

"The Bankruptcy Act does not create any personal or homestead exemptions in favor of the bankrupt. It merely preserves to the bankrupt the full benefit of such exemptions as at the time of the adjudication he is entitled to under the state law. Bankruptcy Act pars. 6, 7a, 8, 47a (11), 70a; **Holden vs. Stratton**, 198 U. S. 202, 25 Sup. Ct. 656, 49 L. Ed. 1018. The determination, therefore, of this question depends on the state of the Ohio Law respecting homestead exemptions."

In re Hewitt 244 Fed. 245.

POINT 6.

By the filing of the petition, the creditors are deprived of their remedy under state laws, and bankrupt and wife are estopped to assert an after acquired or created title.

Under **Acme Harvester Company v. Beekman Lumber Company**, *Supra.*, the supreme court conclusively decided that after the filing of a petition in bankruptcy the creditors could not attach. Therefore, by filing this petition the bankrupt defeated a right of the creditor given him by state law.

Upon this right to attach hinged the right to subject this land to execution sale. At the time of filing this petition the land was not exempt, and was subject to attachment. The bankrupt made no claim for exemption in his schedules, and never has made any such claim. There was no process whereby creditors could subject this land to the payment of their claims except through the Bankruptcy Court. If the decision of the lower court is sustained, we permit the bankrupt, by his voluntary act, to deprive his creditors of the right to attach, and then, long after their rights accrued in the Bankruptcy Court, we permit him to claim a homestead right. The creditors were, during the interim, helpless. We believe that the bankrupt and wife will, under such circumstances, be estopped to assert their homestead.

"1. Bankruptcy—Exempt Property—State Statutes.

Bankr. Act, 6, July 1, 1898, 30 Stat. 548, U. S. Comp. St. 1901, p. 3424, declaring that the act shall not affect the allowance to bankrupts of the exemptions prescribed by the law of the state where the bankrupt has his domicile, did not enlarge the exemptions available to the bankrupt under the state laws, nor prevent the enforcement of Code Iowa, 4015, providing that none of the exemptions prescribed in the chapter should be allowed against an execution issued for the purchase money of property claimed to be exempt.

2. Same—Estoppel of Bankrupt.

Code Iowa, 4015, provides that none of the exemptions prescribed by the chapter should be allowed against an execution issued for the purchase money of property claimed to be exempt, and on which such execution is levied. Held that, where a bankrupt invoked the benefit of the bankrupt act, and thereby precluded a seller of exempt property from obtaining a judgment and levying execution thereon, as required by such section, he was estopped to object that the court of bankruptcy had no

jurisdiction to order that such property be sold, and the proceeds applied to the unpaid purchase price, on the ground that no judgment had been recovered or execution levied.

3. Same—Sale of Exempt Property—Application—By Whom Made.

Since no title to exempt property passes to the trustee in bankruptcy, creditors having claims for unpaid portions of the purchase price of such property, claiming the right to have it sold, and the proceeds applied to such claim, are the proper persons to present such question, and not the trustee in bankruptcy."

In re Boyd 120 Fed. 999.

The case of In re Phillips 209 Fed. 490, is of similar import, where the court holds:

"The trustee under Section 47 and kindred provisions of the Bankruptcy Act is vested with all the rights, powers and remedies of a creditor holding a lien by legal or equitable process on property in his custody. I think this holding on behalf of creditors by the trustee operated with the same effect under the Washington statute, *supra*, as a levy made under execution. From this conclusion it must follow that the bankrupt is not entitled to any of the property claimed which has not been set aside and apart to him as exempt as against unpaid wages or for materials which have not been paid for."

POINT 7.

The construction placed upon 47a of the Bankruptcy Act, as amended in 1910, in the instant case and in *Brandt vs. Mayhew* 218 Fed. 422, is strained and contrary to its plain and unambiguous wording. The line of cleavage for all purposes is the date of the filing of the petition.

In the *Brandt vs. Mayhew* case, the court said:

"Section 6 of the act remains unamended and unrepealed. The amendment does not affect the provisions

of that section The purpose of the amendment to 47a was to make effective the rights of creditors against those who claimed secret or unrecorded liens or adverse interests in the property of the bankrupt."

The language of the statute is perfectly plain and unambiguous. It provides that:

"Such trustee, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankrupt court, shall be deemed vested with all the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied." 47a.

There is no restriction in this language such as the lower court has attempted to insert in it. It is sweeping and all inclusive. The trustee takes the estate as he receives it. The bankrupt has no further title to non-exempt property after the filing of the petition, and this property was then non-exempt.

The provisions of 70a of the act are also explicit, and provide:

"The trustee shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."

The honorable court of the Ninth Circuit has attempted to place in these statutes an unwarranted restriction.

This court enunciated the doctrine that "the filing of the

petition is in effect a caveat and an attachment. *Acme Harvester Co. vs. Beekman Lumber Co.*, *Supra*. The latter case was approved in *Everett vs. Judson*, 228 U. S. 473, 57 L. Ed. 927, (1913) wherein this court said:

"While it is true that p. 70a provides that the trustee, upon his appointment and qualification, becomes vested by operation of law with the title of the bankrupt as of the date he was adjudged a bankrupt, there are other provisions of the statute which, we think, evidence the intention to vest in the trustee the title to such property as it was at the time of the filing of the petition. This subject was considered in *Acme Harvester Co. v. Beekman Lumber Co.* 222 U. S. 300, 56 L. Ed. 208, 32 Sup. Ct. Rep. 96, wherein it was held that, pending the bankrupt proceedings, and after the filing of the petition, no creditor could obtain by attachment a lien upon the property which would defeat the general purpose of the law to dedicate the property to all creditors alike. Section 70a vests all the property in the trustee, which, prior to the filing of the petition, the bankrupt could by any means have transferred, or which might have been levied upon and sold under judicial process against him."

"We think that the purpose of the law was to fix the line of cleavage with reference to the condition of the bankrupt estate as of the time at which the petition was filed, and that the property which vests in the trustee at the time of adjudication is that which the bankrupt owned at the time of the filing of the petition. And it is as of that date that the surrender value of the insurance policies mentioned in p. 70a should be ascertained."

These cases were later approved in *Bailey vs. Baker Ice Machine Company* (*supra*) heretofore quoted.

There is not the slightest suggestion either in the law, or in the decisions of this tribunal, that the line of cleavage is not for all purposes. Property exempt at the time of filing

the petition remains exempt and must be set over to the bankrupt. Property which is non-exempt at that date remains non-exempt and title to it vests in the trustee.

The law of Idaho, as enunciated in *Smith vs. Richards*, 2 Idaho, 500 and other cases cited, is contrary to the rule laid down by the Circuit Court. *Coughanour vs. Hoffmans Estate* 2 Idaho 290, is not in point, in as much as the statute then in force (*Revised Laws of Idaho 1874-5* page 627) permitted the claiming of a homestead at any time prior to execution sale, the statute reading as follows:

"Such exemption shall not extend to any mechanic's, laborer's or vendor's liens lawfully obtained, nor to any mortgage or other lien, lawfully taken or required, to secure the purchase money, for said homestead."

Furthermore, this decision merely decided that a surviving wife as the head of a family under the statute was entitled to claim the homestead.

TO SUMMARIZE:

- (1) The premises constitute a homestead only "from and after" the filing for record of a proper declaration. A homestead constitutes a vested estate in land created by the execution and filing of the declaration and it is beyond the power of a Federal Court to invest the bankrupt or his wife with this estate after the filing of the petition.
- (2) A legally acquired lien upon real property cannot be divested by subsequent declaration of a homestead.
- (3) The filing of a voluntary petition in bankruptcy is in effect a caveat and an attachment, and thereafter the property is in custodia legis.
- (4) The trustee under 47a is deemed vested with all of the

rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings, and the line of cleavage is the date of the filing of the petition. The trustee acquires title to the property as of the date of the filing of the petition, under 70a, because the property at that date was subject to transfer, levy and execution.

(5) The property was not exempt at the time of the filing of the petition, and passed absolutely to the trustee. Neither the bankrupt nor his wife can subsequently claim a statutory homestead, but are estopped.

(6) The line of cleavage for **all purposes** in bankruptcy is the date of the filing of the petition.

(7) In the opinion of your petitioner the Circuit Court of Appeals of the Ninth Circuit manifestly erred in its decision of this matter.

Wherefore, may it please your Honors to grant the writ for the reasons herein set forth, to the end that the whole case on the record may be examined, and right completely done.

Respectfully submitted,

SAMUEL O. TANNAHILL,

ROBERT D. LEEPER,

JAMES E. BABB,

Attorneys and of Counsel for
Petitioner.

JAMES E. BABB,

Of Counsel for Petitioner.

No.

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of PETE STUMP, Bankrupt,
 SAMUEL D. WHITE, Trustee,

Petitioner,

vs

VETA STUMP,

Respondent,

**REQUEST TO CLERK TO CALL UP AND
 SUBMIT PETITION.**

TO WILLIAM R. STANSBURY, CLERK OF THE SUPREME COURT OF THE UNITED STATES:

Counsel for Samuel D. White, trustee, petitioner for a writ of certiorari in the above entitled matter, hereby under "paragraph three of the instructions as to applications for writs of certiorari under Acts of March 3, 1891, and September 6, 1916," respectfully request that you call up and submit in open court, for petitioner, his said petition, as per a notice served on opposing counsel and proof of such service herewith filed.

SAMUEL O. TANNAHILL,

ROBERT D. LEEPER,

JAMES E. BABB,

Attorneys and of Counsel for
 Petitioner.

JAMES E. BABB,

Of Counsel for Petitioner.

No.....

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of PETE STUMP, Bankrupt,
 SAMUEL D. WHITE, Trustee,
 Petitioner,

VS

VETA STUMP,

Respondent,

NOTICE OF REQUEST TO SUBMIT

TO HARVE PHIPPS, Spokane, Washington, attorney for respondent:

You will please take notice that petitioner will file with his said petition and brief, the foregoing request to the Clerk of the Supreme Court of the United States, to call up and submit in open court the said petition at the January term, 1923 of said court, at the opening of the said court on the 22nd day of January, 1923, in the court room of the said court at the Capitol, in the City of Washington, D. C. or as soon thereafter as counsel, or the said clerk for counsel, can or may be heard for the purpose aforesaid.

SAMUEL O. TANNAHILL,
 ROBERT D. LEEPER,
 JAMES E. BABB,

Attorneys and of Counsel for
 Petitioner.

JAMES E. BABB,

Of Counsel for Petitioner.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of PETE STUMP, Bankrupt,
 SAMUEL D. WHITE, Trustee,
 Petitioner,

vs.

VETA STUMP,

Respondent.

PROOF OF SERVICE.

UNITED STATES OF AMERICA,)
 State and District of Idaho,) ss.
 County of Nez Perce,)

Robert D. Leeper, being first duly sworn upon oath, deposes and says:

That he is one of the attorneys for the petitioner above named in the above entitled cause; that he deposited in the postoffice of the United States, at Lewiston, Idaho, with postage prepaid, by registered mail, on this ~~24th~~ day of December, 1922, a full, true and correct copy of the record in the court below, together with a full, true and correct copy of the petition for writ of certiorari herein and brief in support thereof, notice of application for writ, motion for writ, request to clerk for a submission and notice thereof, addressed to and served thus upon Harve H. Phipps, attorney for respondent, at his office in the Sherwood Building, Spokane, Washington; that return cards were demanded for the receipt of the said registered mail; that the original registry receipts aforesaid are attached hereto, and that by reason of such evidence, it is shown that the said Harve H. Phipps, was served thus on the ~~24th~~ day of December, 1922.

ROBERT D. LEEPER.

Subscribed and sworn to before me this ~~24th~~ day of December, 1922.

SAMUEL O. TANNAHILL,
 Notary Public in and for said state,
 residing at Lewiston, therein.

(Seal).



**Notice of Submission of Answer Brief to Petition
For Writ of Certiorari**

SAMUEL O. TANNAHILL,
ROBERT D. LEEPER,
JAMES E. BABB,
Counsel for
SAM'L D. WHITE, Trustee
in the above entitled matter:

Please take notice that upon the submission to the supreme court of your petition for writ of certiorari, we shall submit the annexed Answer Brief for consideration by the court.

Dated at Olympia, Washington, January 12, 1923.

HARVE H. PHIPPS,
Attorney and Counsel for Respondent.

Service of foregoing notice and annexed Answer Brief is hereby admitted this.....day of January, 1923.

.....
*Attorneys for Petitioner,
Sam'l D. White, Trustee.*

PROOF OF MAILING ANSWER BRIEF.

STATE OF WASHINGTON, }
COUNTY OF THURSTON. } ss.

The undersigned, being first duly sworn, deposes and says: That on January 12, 1923, at Olympia, Washington, I deposited in the United States Post-office, in a sealed envelope addressed to Samuel O. Tannahill, Robert D. Leeper, and James E. Babb, Lewiston, Idaho, a true copy of the answer in this case, postage fully prepaid thereon.

ALBERT H. SUNDAHL.

Subscribed and sworn to before me this 12th day of January, 1923.

FRED W. AGATZ,
Notary Public in and for the State
of Washington, residing at Olympia.

**BRIEF IN ANSWER TO PETITION FOR
WRIT OF CERTIORARI POINTS
AND AUTHORITIES.**

The history of this case is substantially stated in the opinion of the United States Circuit Court of Appeals for the 9th Circuit, which opinion is found on pages 65 to 73, inclusive of the transcript of record in this case.

Many phases of the Federal Bankruptcy law, and Homestead Laws of the State of Idaho have been ably discussed in the petitioner's brief for writ of certiorari in this case; however, there is but one main question involved and we will confine our argument in so far as possible to that question.

The main question is, did Veta Stump, the wife of the bankrupt, have the right to claim a homestead under the laws of the State of Idaho by seasonably filing the proper declaration of homestead after her husband had filed his petition in bankruptcy; or did the filing of the petition in bankruptcy by her husband work an attachment of her property and subject it to the claim of creditors to the prejudice of her homestead exemptions.

It is true that, when one files his petition in bankruptcy, the arm of the law surrounds his property and stays the hand of all creditors until the bankruptcy court can administer the bankruptcy estate. This arm of the law we speak of as warding off the

hands of impatient creditors also serves another very important function—it forms a circle of protection around the wife and children of the bankrupt, so they cannot be turned out of house and home and left stranded without even a roof over their heads.

The petitioner's assignment of error is in the following language: "Your petitioner assigns as error the entering of judgment by the Circuit Court of Appeals of the Ninth Circuit in the instant case wherein the decision of the District Court of the United States for the District of Idaho was sustained, such judgment being found at Pages 73-74 of the transcript."

The argument of the petitioner is based on various sections of the Revised Statutes of Idaho governing homestead exemptions quoted on Page 4 of the transcript of record, and on Sections 70a and 47a, Clause 2 of the Bankruptcy Act of 1898.

The sections of the Idaho statute quoted in petitioner's brief were apparently borrowed from the Code of California; and these sections, as well as sections 70a and 47a, Clause 2 of the Bankruptcy Act of 1898, were quoted in the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of *Brandt v. Mayhew*, 134 cca, 210 (9th Circuit) 218, Federal 422, the decision on which the Circuit Court based its opinion as it was duty bound to do, in view of the fact that the law and facts were identical with

the instant case, and in the *Brandt v. Mayhew* case the court held:

"The bankrupt is not precluded from claiming a homestead exemption from the operations of the bankruptcy law merely because prior to the adjudication he had failed to designate a homestead under the laws of the state, provided, that after claiming it, he proceeded under the said law, to perfect his right within a reasonable time." (218 Federal 425.)

In the case of *White v. Stump*, the decision rendered by the Circuit Court of appeals for the 9th Circuit October 30, 1922, that court rightly held as follows:

First. That the time and manner of claiming, selecting and allowing exemptions are wholly within the jurisdiction and control of the bankruptcy court.

Second. That claims for exemptions contained in the voluntary bankrupt schedule under the bankruptcy act, Section 7a, cl. 8 (Comp. St. Clause 9591), may be amended, if seasonably done, or, if by oversight, the claim for homestead is omitted from the schedule, it may be amended on timely application.

Third. The status of a trustee in bankruptcy as a creditor having a lien from the time of the filing of the petition under Bankruptcy Act, 47a, cl. 2 (Comp. St. 9631), does not affect the right of the bankrupt's wife to file thereafter a declaration of homestead as permitted by the state laws (Comp. St. Idaho, 1919, 5441, 5462-5464), in view of the Bankruptcy Act, 6 (Comp. St. 9590) though under

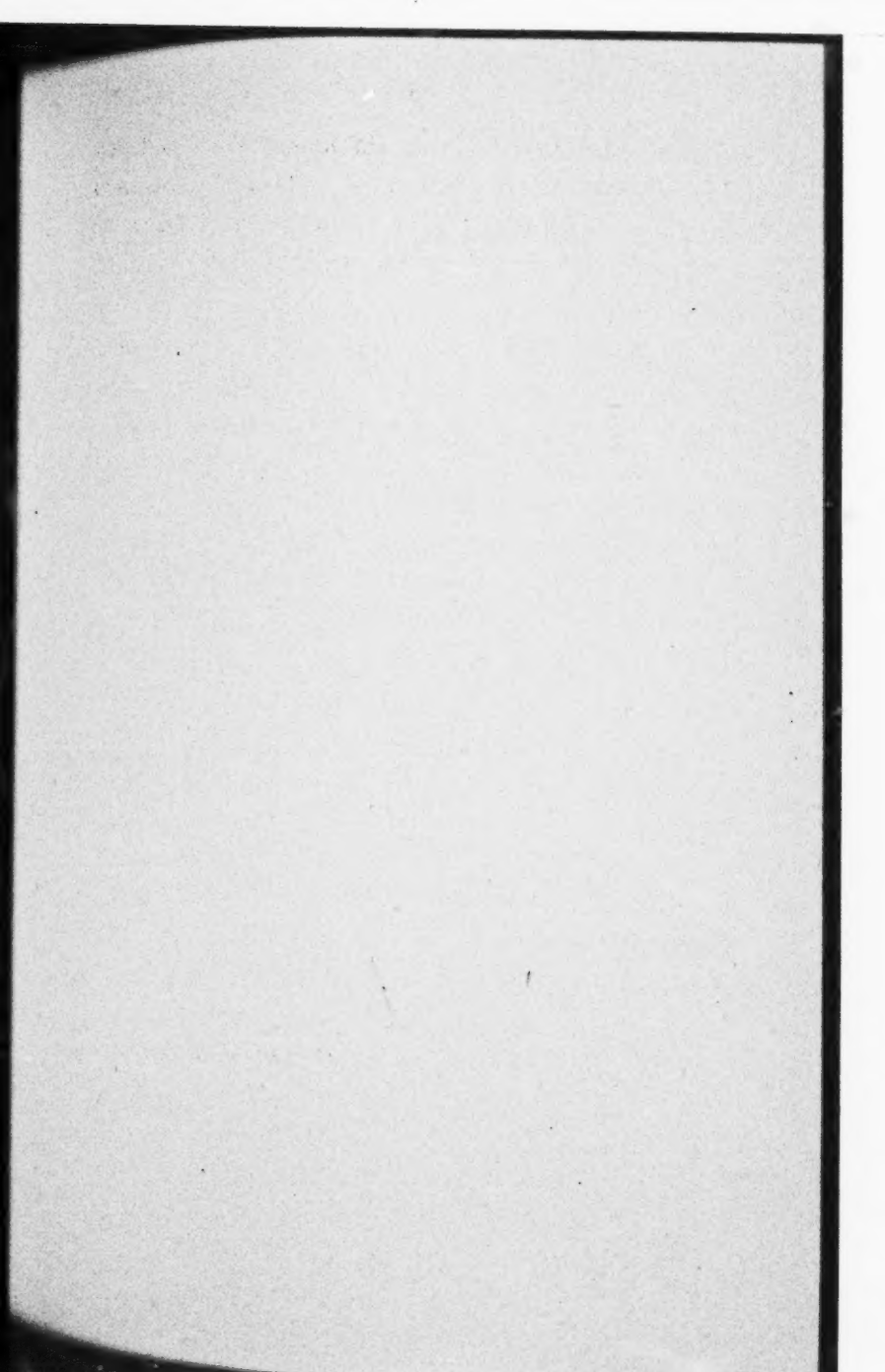
Comp. St. Idaho 1919, 5437, the homestead is subject to forced sale in satisfaction of judgments obtained before the filing of the declaration or obtained in an action in which an attachment was levied before such filing.

Fourth. Though the filing of a voluntary petition in bankruptcy deprived creditors of their right to proceed against the bankrupt's property by levy of attachment or other mode of acquiring an involuntary lien, the bankrupt and his privies are not thereafter estopped to claim a homestead from the assets. (*White v. Stump* advance sheets, The Federal Reporter, dated December 28, 1922, Page 199.)

Wherefore the facts being undisputed, the law clearly and rightly settled, and the petition for writ of certiorari being without merit, we ask that this Honorable Court adopt the reasoning of the Circuit Court of Appeals for the Ninth Circuit and that the petition for certiorari be rejected and dismissed upon the authority of *Brandt v. Mayhew* and *White v. Stump*, above quoted.

Respectfully submitted,

HARVE H. PHIPPS,
Attorney for Respondent.



SUPREME COURT OF THE UNITED STATES.

No. 20.—OCTOBER TERM, 1924.

Samuel D. White, Trustee, etc., Pe-	}	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.
tionner,		
vs. Veta Stump.		

[November 24, 1924.]

Mr. Justice VAN DEVANTER delivered the opinion of the Court.

Peter Stump was adjudged a bankrupt on his voluntary petition, which was accompanied by the usual schedules. Among the assets listed was a quarter section of land on which he and his family had been and were residing; but nothing was said at the time about a homestead exemption. Two months later the bankrupt's wife, with his assent, asked that the land be set apart as an exempt homestead for their joint benefit. The trustee objected and on a hearing the exemption was disallowed by the referee. On review that ruling was reversed by the District Court, and on petition for revision the reversal was sustained by the Circuit Court of Appeals, 284 Fed. 199. The case is here on certiorari.

The laws of the State of Idaho, where the land is situate, provide for a homestead exemption, but only where a declaration that the land is both occupied and claimed as a homestead is made and filed for record as therein prescribed. If the family consist of husband and wife, whether with or without children, either may make the declaration. It 'must' be executed and acknowledged like a conveyance of real property and 'must' be filed for record in the office of the county recorder. The exemption arises when the declaration is filed, and not before. Up to that time the land is subject to execution and attachment like other land; and where a levy is effected while the land is in that condition the subsequent making and filing of a declaration neither avoids the levy nor prevents a sale under it. Idaho Comp. Stat. 1919, secs. 5441,

5462-5465; *Smith v. Richards*, 2 Idaho 498; *Wright v. Westheimer*, 3 Idaho 232; *Law v. Spence*, 5 Idaho 244; *Burbank v. Kirby*, 6 Idaho 210.

Here no declaration was made and filed for record until a month after Stump's petition in bankruptcy was filed and he was adjudged a bankrupt. A declaration was then made and filed by his wife for their joint benefit. Whether in these circumstances there was such a right to a homestead exemption as could be recognized and allowed in the bankruptcy proceeding is the question for decision.

The District Court gave an affirmative answer in deference to the decision of the Circuit Court of Appeals for that circuit in *Brandt v. Mayhew*, 218 Fed. 422, a case arising in California, in which it was held, one judge dissenting, that a bankrupt is not precluded from claiming a homestead as exempt merely because, when the petition in bankruptcy is filed, he has not done all that is required by the state law to entitle him to the exemption, but may rightfully demand that the exemption be allowed where he has met the requirements of the state law within a reasonable time after the filing of the petition. The Circuit Court of Appeals adhered to that decision, and therefore sustained the action of the District Court. Other courts in which the question has arisen have regarded the bankruptcy law as meaning that the right to such an exemption must be tested by the situation existing when the petition in bankruptcy is filed, and have held that where the land is not then exempt under the state law it passes to the trustee for the benefit of the creditors. *In re Youngstrom*, 153 Fed. 98; *Edgington v. Taylor*, 270 Fed. 48; *In re Lehfelddt*, 225 Fed. 681.

The bankruptcy law does not directly grant or define any exemptions, but directs, in section 6, that the bankrupt be allowed the exemptions 'prescribed by the state law in force at the time of the filing of the petition';—in other words, it makes the state laws existing when the petition is filed the measure of the right to exemptions. It further provides that a voluntary bankrupt shall claim the exemptions to which he is entitled in a schedule filed 'with the petition,' and an involuntary bankrupt shall claim his in a schedule filed within ten days after the adjudication, unless

further time be granted, sec. 7, cl. 8; that the trustee shall set apart the exempt property and report the same to the court as soon as practicable after his appointment, sec. 47a, cl. 11; that the trustee shall be vested by operation of law with the title of the bankrupt to all property, is so far as it is not exempt, which 'prior to the filing of the petition' he could by any means have transferred or which might have been levied upon and sold under judicial process, sec. 70a; and that the bankrupt shall be given a discharge releasing him from debts owing 'at the time of the filing of the petition,' secs. 17 and 63.

These and other provisions of the bankruptcy law show that the point of time which is to separate the old situation from the new in the bankrupt's affairs is the date when the petition is filed. This has been recognized in our decisions. Thus we have said that the law discloses a purpose 'to fix the line of cleavage' with special regard to the conditions existing when the petition is filed, *Everett v. Judson*, 228 U. S. 474, 479, and that—"It is then that the bankruptcy proceeding is initiated, that the hands of the bankrupt and of his creditors are stayed and that his estate passes actually or potentially into the control of the bankruptcy court." *Bailey v. Baker Ice Machine Co.*, 239 U. S. 268, 275; *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U. S. 300, 307. When the law speaks of property which is exempt and of rights to exemptions it of course refers to some point of time. In our opinion this point of time is the one as of which the general estate passes out of the bankrupt's control, and with respect to which the status and rights of the bankrupt, the creditors and the trustee in other particulars are fixed. The provisions before cited show—some expressly and others impliedly—that one common point of time is intended and that it is the date of the filing of the petition. The bankrupt's right to control and dispose of the estate terminates as of that time, save only as to 'property which is exempt', sec. 70a. The exception, as its words and the context show, is not of property which would or might be exempt if some condition not performed were performed, but of property to which there is under the state law a present right of exemption—one which withdraws the property from levy and sale under judicial process.

The land in question here was not in that situation when the petition was filed. It was not then exempt under the state law, but was subject to levy and sale. One of the conditions on which it might have been rendered exempt had not been performed. Under the state law the fact that the other conditions were present did not suffice. The concurring presence of all was necessary to create a homestead exemption.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.